



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 1, 2019

Mr. Michael T. Garner  
Assistant City Attorney  
City of Conroe  
P.O. Box 3066  
Conroe, Texas 77305

OR2019-30883

Dear Mr. Garner:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 794856.

The City of Conroe (the "city") received a request for all information pertaining to a specific incident involving the requestor's client. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a CR-3 accident report that is subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. *See* Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* § 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is a person listed under section 550.065(c). *See id.* § 550.065(c)(4)(B) (providing a governmental entity shall release the information to an authorized representative of any person involved in the accident). Although the city asserts section 552.136 of the Government Code to withhold this information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See, e.g.,* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Because section 552.136 is a general exception under the Act, the requestor's statutory access under section 550.065(c) prevails, and the city may not withhold the information under section 552.136 of the Government Code. The city also seeks to withhold dates of birth of public citizens in the CR-3 accident report under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note a statutory right of access also prevails over the common law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); *Collins v. Tex. Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle). Thus, no portion of the CR-3 accident report may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

Additionally, the city asserts section 552.130 of the Government Code for the motor vehicle record information contained in the accident report. As previously noted, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See, e.g.,* ORDs 613 at 4, 451. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Thus, we must address the conflict between the confidentiality provided under section 552.130 of the Government Code and the right of access provided under section 550.065(c) of the Transportation Code for the accident report. Where information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 211 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones); Open Records Decision Nos. 598 (1991), 583 (1990), 451. Section 550.065(c) specifically provides access only to accident reports of the type at issue, while section 552.130 generally excepts motor vehicle record information maintained in any context. Thus, we conclude the access to the accident report provided under section 550.065(c) is more specific than the general confidentiality provided under section 552.130. Accordingly, the city may not withhold the information at issue under section 552.130. Therefore, the city must release the CR-3 accident report in its entirety to the requestor pursuant to section 550.065(c) of the Transportation Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than a conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section

552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the remaining submitted information pertains to a criminal case that “has not result[ed] in a conviction or deferred adjudication.” We note section 552.108(a)(2) is applicable only if the information at issue is related to a concluded criminal case “that *did not* result in conviction or deferred adjudication[.]” *See id.* § 552.108(a)(2) (emphasis added). Thus, we find you failed to demonstrate the applicability of section 552.108(a)(2) to the remaining submitted information, and the city may not withhold the information at issue on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client’s motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) (person or person’s authorized representative has a special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code.

Section 552.1175 of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>1</sup> Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Thus, to the extent the information we indicated consists of a personal cellular telephone number of a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information under section 552.1175 of the Government Code; however the personal cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service. Conversely, if the individual at issue whose information is at issue is not a currently licensed peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the city may not withhold the indicated information under section 552.1175.

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). We note the requestor has a right of access to his client’s date of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Thus, with the exception of the requestor’s client’s date of birth, the city must withhold the date of birth in the submitted video recordings under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must release the CR-3 accident report in its entirety to the requestor pursuant to section 550.065(c) of the Transportation Code. The city must withhold the motor vehicle record information we indicated under section 552.130 of the Government Code. To the extent the information we indicated consists of a personal cellular telephone number of a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold the information under section 552.1175 of the Government Code; however the personal cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service. With the exception of the requestor’s client’s date of birth, the city must withhold the date of birth in the submitted video recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information.<sup>2</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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<sup>2</sup> We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a); ORD 481 at 4. Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Kimbell Kesling". The signature is written in black ink and includes a decorative flourish at the end.

Kimbell Kesling  
Attorney  
Open Records Division

KK/eb

Ref: ID# 794856

Enc. Submitted documents

c: Requestor  
(w/o enclosures)