



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 5, 2019

Mr. Robert Carroll
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2019-31117

Dear Mr. Carroll:

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# 802032 (ORR# P001281-092519).

The City of Odessa (the "city") received a request for information pertaining to a specified incident involving a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 encompasses information 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. 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).

You argue the submitted information is confidential under section 550.065(b). We note, however, the submitted information does not include a written accident report for the purposes of section 550.065(a). Thus, we find you failed to demonstrate the applicability of section 550.065 to the information at issue. Consequently, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The 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.). The submitted information contains the date of birth of the named individual. However, we note the requestor may have a right of access to the named individual's date of birth. Accordingly, if the requestor is not acting as the authorized representative of the named individual, the city must withhold this individual's date of birth under section 552.101 of the Government Code on the basis of common-law privacy. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Conversely, to the extent the requestor is acting as an authorized representative of the named individual, the city must release this individual's date of birth.

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.¹ *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, to the extent the requestor is acting as the authorized representative of the named individual, he has a right of access to this individual'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); ORD 481 at 4. To the extent the requestor is not acting as the authorized representative of the individual at issue, the city must withhold the information we marked related to this individual under section 552.130 of the Government Code.

In summary, if the requestor is not acting as the authorized representative of the named individual, then the city must (1) withhold the named individual's date of birth under section 552.101 of the Government Code on the basis of common-law privacy, (2) withhold

¹ 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).

the information we marked under section 552.130 of the Government Code, and (3) release the remaining information. If the requestor is acting as the authorized representative of the named individual, then the city must release the submitted information.

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 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 "Meagan Hunter". The signature is written in black ink and is positioned above the typed name.

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/mo

Ref: ID# 802032

Enc. Submitted documents

c: Requestor
(w/o enclosures)