



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 8, 2020

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

OR2020-00688

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# 805208 (ORR# P00902).

The City of Odessa (the "city") received a request for information pertaining to a specified incident. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted information.

Exhibit B consists of 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. 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.*

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<sup>1</sup> We note the city did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider whether the submitted information must be withheld on those grounds.

§ 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).

The requestor is a person listed under section 550.065(c) and, thus, has access to report pursuant to that section. Although the city raises common-law privacy for some of this information, a statutory right of access prevails over a claim under common-law privacy. *See 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); *see also 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). However, the city also asserts section 552.130 of the Government Code for the motor vehicle record information contained in the accident report. Because section 552.130 has its own access provisions, that section 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. Therefore, we conclude the access to the accident reports provided under section 550.065(c) is more specific than the general confidentiality provided under section 552.130. Accordingly, the city must release the CR-3 accident report in its entirety pursuant to section 550.065(c) of the Transportation Code.

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 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 Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 city must withhold the date of birth in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

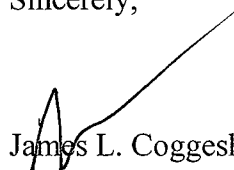
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the date of birth in Exhibit C under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. 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 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jxd

Ref: ID# 805208

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> Because the requestor has a special right of access to some of the information being released, the city must again seek a decision from this office if it receives another request for the same information from another requestor.