



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 17, 2020

Ms. Heather Silver  
Assistant City Attorney  
City of Dallas  
1400 South Lamar, 6th Floor, 6W  
Dallas, Texas 75215

OR2020-20598

Dear Ms. Silver:

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# 839854 (ORR# D000938-010920).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor's client. The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>2</sup>

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

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<sup>1</sup> The department acknowledges, and we agree, it 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, 552.102, 552.130, and 552.136 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 under those exceptions.

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 district asserts section 552.102 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 552.102 is a general exception under the Act, the requestor's statutory access under section 550.065(c) prevails, and the department may not withhold the information at issue under section 552.102 of the Government Code.

Additionally, the department asserts section 552.130 of the Government Code for some of 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 department may not withhold the information at issue under section 552.130. Therefore, the department must release the CR-3 accident report in its entirety to the requestor pursuant to section 550.065(c) of the Transportation Code.

Section 552.101 of the Government Code excepts "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, 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 the *Industrial Foundation* decision. *Id.* at 683. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). 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.). Upon review, we agree the information that you marked in the submitted documents under common-law privacy satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the portions of the submitted video recordings you indicated are highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold the information you indicated under section 552.101 of the Government Code on that 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 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 department must withhold the motor vehicle record information you marked in the remaining information and all discernible license plates under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the department must withhold the insurance policy number you marked under section 552.136 of the Government Code.

In summary, the department must release the CR-3 accident report in its entirety to the requestor pursuant to section 550.065(c) of the Transportation Code. The department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you marked and all discernible license plates under section 552.130 of the Government Code. The department must withhold the insurance policy number you marked under 552.136 of the Government Code. The department must release the remaining information.<sup>3</sup>

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<sup>3</sup> We note the information being released contains information to which the requestor has a right of access. *See* Transp. Code § 550.065(c); Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987). Accordingly, if the department receives another request for this same information from a different requestor, it must again seek a ruling from this office.

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,

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/be

Ref: ID# 839854

Enc. Submitted documents

c: Requestor  
(w/o enclosures)