



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2020

Ms. D'na M. Collins
Assistant Criminal District Attorney
Victoria County
205 North Bridge Street, Suite 301
Victoria, Texas 77901-8085

OR2020-26421

Dear Ms. Collins:

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# 849963.

The Victoria County District Attorney's Office (the "district attorney's office") received a request for information related to a particular case. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the district attorney's office's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You inform us

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

the district attorney's office received the request for information on August 5, 2020. Accordingly, the district attorney's office's ten and fifteen-business-day deadlines were August 19, 2020, and August 26, 2020, respectively. However, you submitted the written request for a ruling and written comments stating the reasons why the claimed exceptions apply in an envelope postmarked September 9, 2020. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district attorney's office failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You claim sections 552.101, 552.108, and 552.130 of the Government Code for the information at issue. Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the information at issue. Nonetheless, we find you failed to establish a compelling reason to address your remaining claimed exception.

Next, we note the submitted information contains CR-3 accident reports that are subject to chapter 550 of the Transportation Code, which we have marked. 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).

In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident reports are confidential under section 550.065(b), and the district attorney's office must withhold them under section 552.101 of the Government Code on that basis. However, section 550.065(c-1) requires the district attorney's office to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted accident reports pursuant to section 550.065(c-1). Although the district attorney's office raises section 552.101 of the Government Code in conjunction with common-law privacy for information in the CR-3 reports, we note a statutory right of access prevails over the common law. *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).

The district attorney's office also asserts section 552.130 of the Government Code for the motor vehicle record information contained in the information at issue. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country. See Gov't Code § 552.130(a)(1)-(2). A statutory right of access generally prevails over the Act's general exceptions to disclosure. See Open Records Decision Nos. 613 at 4 (1993), 451 at 4 (1986). 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-1) of the Transportation Code for the redacted accident reports. 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-1) 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 accident reports provided under section 550.065(c-1) is more specific than the general confidentiality provided under section 552.130. Accordingly, the district attorney's office may not withhold any portion of the information at issue under section 552.130. Therefore, the district attorney's office must release the redacted CR-3 accident reports to this requestor pursuant to section 550.065(c-1) 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 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.). Thus, the district attorney's office must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

As noted above, 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. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the district attorney's office must withhold the motor vehicle record information we have marked and indicated in the remaining information under section 552.130 of the Government Code. However, we find you have failed to demonstrate the

remaining information at issue is subject to section 552.130. Thus, the district attorney's office may not withhold the remaining information at issue on that basis.

In summary, the district attorney's office must withhold the submitted accident reports under section 552.101 of the Government Code in conjunction with section 55.065(b) of the Transportation Code; however, the district attorney's office must release the redacted accident reports to the requestor pursuant to section 550.065(c-1) of the Transportation Code. The district attorney's office must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The district attorney's office must withhold information we have marked and indicated in the remaining information under section 552.130 of the Government Code. The district attorney's office must release the remaining information.²

Finally, you request that this office issue a "previous determination" that would permit the district attorney's office in the future to withhold from disclosure information subject to section 552.108(a)(1) of the Government Code without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. Accordingly, 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/rm

Ref: ID# 849963

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).