



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 28, 2022

Mr. Joe Shumate  
Counsel for the City of Henderson  
Shumate Law Office  
P.O. Box 1915  
Henderson, Texas 75653-1915

OR2022-12190

Dear Mr. Shumate:

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# 944005.

The Henderson Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a specified incident. We understand the department will withhold information subject to section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001).<sup>1</sup> We also understand the department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.<sup>2</sup>

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 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

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<sup>1</sup> A governmental body may withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. See ORD 670.

<sup>2</sup> Although the department does not cite to sections 552.101 and 552.130 of the Government Code in its brief, we understand it to raise these exceptions based on its markings.

\$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 information subject to section 550.065 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 second requestor is a person listed under section 550.065(c). Therefore, the second requestor has a right of access to the submitted accident report. The first requestor has not demonstrated they are a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b) with respect to the first requestor, and the department must withhold it under section 552.101 of the Government Code on that basis. However, section 550.065(c-1) requires the department 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 first requestor has a right of access to the redacted accident report. Accordingly, the department must release the CR-3 accident report in its entirety to the second requestor pursuant to section 550.065(c) of the Transportation Code and must release the redacted CR-3 accident report to the first requestor pursuant to section 550.065(c-1) of the Transportation Code.

Section 552.130 of the Government Code excepts from disclosure 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. We note section 552.130 protects personal privacy. Accordingly, the second requestor has a right of access to their 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) (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 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Upon review, we find the submitted video recordings contains confidential motor vehicle record information that does not pertain to the second requestor's client. In this instance, the department states it does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the entireties of the submitted video recordings under section 552.130 of the Government Code.<sup>3</sup> *See* Open Records Decision No. 364 (1983). Further, we find portions of the remaining information consists of motor vehicle record information. Accordingly, except for the motor vehicle record information pertaining to the second requestor's client, which must be released to him, the department must withhold the information it marked and the additional information we have indicated under section 552.130 of the Government Code.

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<sup>3</sup> As our ruling is dispositive, we need not address the applicability of section 1701.661(a) of the Occupations Code to the submitted body worn camera video recording. *See generally* Occ. Code § 1701.661(a), (e).

Section 552.101 of the Government Code also encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than 3.3 million. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

The department does not inform us whether it is part of an emergency communication district established under section 772.118, 772.218, or 772.318 of the Health and Safety Code, or whether the telephone number and address at issue were furnished by a 9-1-1 service supplier. Nevertheless, if the department is part of an emergency communication district established under one of these sections, then, to the extent the information at issue contains a telephone number or an address of a 9-1-1 caller that was supplied by a 9-1-1 service supplier, the department must withhold that information under section 552.101 of the Government Code in conjunction with section 772.118, 772.218, or 772.318 of the Health and Safety Code. If the department is not subject to section 772.118, 772.218, or 772.318 or if the information does not contain a telephone number or address that was supplied by a 9-1-1 service supplier, then the department may not withhold the information at issue on any of those grounds.

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.). As noted above, the second requestor has a right of access to confidential information pertaining to the second requestor's client pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Thus, except for the date of birth belonging to the second requestor's client, which must be released to the second requestor, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must release the CR-3 accident report in its entirety to the second requestor pursuant to section 550.065(c) of the Transportation Code and must release the redacted CR-3 accident report to the first requestor pursuant to section 550.065(c-1) of the Transportation Code. The department must withhold the entireties of the submitted video recordings under section 552.130 of the Government Code. Except for the motor vehicle record information pertaining to the second requestor's client, which must be released to him, the department must also withhold the information it marked and the additional information we have indicated under section 552.130 of the Government Code.

Except for the date of birth belonging to the second requestor's client, which must be released to the second requestor, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining information.<sup>4</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,

Pearlie Gault  
Attorney  
Open Records Division

PG/be

Ref: ID# 944005

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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<sup>4</sup> We note the second requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the department receives another request for the same information from a different requestor, the department must again seek a decision from this office.