



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2022

Ms. Monica Nunez-Garza
Junior Associate Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2022-15950

Dear Ms. Nunez-Garza:

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# 952003 (City ID No. MCAG 22-23).

The Missouri City Police Department (the "department") received a request for all police reports for certain incidents at a specified location during a specified period of time.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information you marked relates to closed

¹ You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

criminal investigations that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue. We note, pursuant to the court's decision in *City of Carrollton v. Paxton*, 490 S.W.3d 187 (Tex. App.—Austin 2016, pet. denied), and the department's briefing, section 552.108(c) of the Government Code is not applicable in this instance. Therefore, the department may withhold the information you marked under section 552.108(a)(2) of the Government Code.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 a person listed under section 550.065(c) with respect to one of the submitted accident reports, which we marked. Thus, the requestor has a right of access to the entire accident report we marked pursuant to section 550.065(c). However, the requestor is not a person listed under section 550.065(c) with respect to the remaining submitted accident reports. Thus, the remaining accident reports are confidential under section 550.065(b), and the department must withhold them under section 552.101 of the Government Code.³ 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 requestor has a right of access to the redacted accident reports at issue. Although the department asserts section 552.136 for some of the information at issue, we note a statutory right of access generally prevails over the Act's general exceptions to 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 552.136 is a general exception under the Act, the requestor's statutory access under sections 550.065(c) and 550.065(c-1) prevails and the department may not

² As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

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withhold the information at issue under section 552.136 of the Government Code. Although you also assert section 552.101 in conjunction with common-law privacy to withhold some of the information, a statutory right of access overcomes 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). Therefore, the department may not withhold any portion of the information at issue under section 552.101 of the Government Code on the basis of common-law privacy. However, you also assert 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, or personal identification document issued by an agency of this state or another state or country. *See Gov't Code § 552.130.* As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See, e.g., ORDs 613 at 4, 451.* 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 sections 550.065(c) and 550.065(c-1) of the Transportation Code.

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. Sections 550.065(c) and 550.065(c-1) specifically provide 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 report we marked provided under section 550.065(c) and the redacted accident reports provided under section 550.065(c-1) is more specific than the general confidentiality provided under section 552.130. Accordingly, the department may not withhold any portion of the information at issue under section 552.130 of the Government Code. Thus, the department must release the accident report we marked to this requestor under section 550.065(c) of the Transportation Code and the redacted accident reports to this requestor under section 550.065(c-1) of the Transportation Code.

In summary, the department may withhold the information you marked under section 552.108(a)(2) of the Government Code. The department must release the accident report we marked under section 550.065(c) of the Transportation Code. The department must withhold remaining the accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; however, the department must release the redacted accident reports under section 550.065(c-1) of the Transportation Code.

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,

Nick Ybarra
Assistant Attorney General
Open Records Division

NY/jxd

Ref: ID# 952003

Enc. Submitted documents

c: Requestor
(w/o enclosures)