



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 20, 2022

Ms. Bridgette Begle  
Counsel for the City of Waller  
Olson & Olson  
2727 Allen Parkway  
Houston, Texas 77019-2133

OR2022-28865

Dear Ms. Begle:

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# 973015 (Ref. ID No. COW22-009).

The Waller Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident involving the requestor's clients.<sup>1</sup> You state you will redact certain information pursuant to section 552.147(b) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Some of the submitted information 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.

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<sup>1</sup> We note, and you acknowledge, the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of these exceptions to the submitted information, notwithstanding the department's violation of section 552.301 in requesting this decision.

<sup>2</sup> 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).

*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). Thus, the department must release the accident report in its entirety to this 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. 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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.). We note the requestor has a right of access to his clients’ dates of birth pursuant to section 552.023 of the Government Code and that information may not be withheld from the requestor under section 552.101 on the basis of common-law privacy. *See* Gov’t Code § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (privacy theories not implicated when individual requests information concerning herself). Thus, with the exception of the dates of birth belonging to the requestor’s clients, the department must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

You state you will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>3</sup> Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s or 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. We note section 552.130 is designed to protect the privacy of individuals. Thus, the requestor has a right of access to his clients’ motor vehicle record information, and it may not be withheld from him under section 552.130. *See id.* § 552.023; ORD 481 at 4. Upon review, we note the submitted video recordings contain visible motor vehicle record information that is subject to section 552.130. You state the department lacks the technological capability to redact information from the video recordings at issue. Accordingly, the department must withhold the submitted video recordings in their entireties and the motor vehicle record information we

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<sup>3</sup> Section 552.130(c) allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

marked under section 552.130 of the Government Code.<sup>4</sup> *See* Open Records Decision No. 364 (1983).

Section 552.136 of the Government Code provides, “[N]otwithstanding any other provision of [the Act], 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.”<sup>5</sup> Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold the insurance policy number we marked under section 552.136 of the Government Code.

In summary, the department must release the accident report in its entirety to this requestor pursuant to section 550.065(c) of the Transportation Code. With the exception of the dates of birth belonging to the requestor’s clients, 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 withhold the submitted video recordings in their entireties and the motor vehicle record information we marked under section 552.130 of the Government Code. The department must withhold the insurance policy number we marked under section 552.136 of the Government Code. The department must release the remaining information.<sup>6</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  
Assistant Attorney General  
Open Records Division

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<sup>4</sup> As we are able to make this determination, we do not address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

<sup>5</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481, 480 (1987), 470 (1987).

<sup>6</sup> We note the 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.

Ref: ID# 973015

Enc. Submitted documents

c: Requestor  
(w/o enclosures)