



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2013

Ms. Samantha Dyal
Counsel for City of Schertz
Fulbright & Jaworski, L.L.P.
300 Convent Street, Suite 2100
San Antonio, Texas 78205-3792

OR2013-06267

Dear Ms. Dyal:

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# 484338.

The Schertz Police Department (the "department"), which you represent, received a request for a full information report related to a specified incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.1175, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) provides, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has provided the department with two of the requisite pieces of

¹Although you claim section 552.117 of the Government Code for portions of the submitted information, section 552.1175 is the proper exception to raise in this instance because the department does not hold the submitted information in an employment capacity.

information specified by the statute. Although you seek to withhold portions of this information under section 552.136 of the Government Code, we note a statutory right of access generally prevails over the exceptions to public disclosure under the Act. *See* 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).

You also assert portions of the CR-3 accident report form are confidential under section 552.130 of the Government Code. 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 county. *See* Gov't Code § 552.130(a)(1)-(2). As noted above, a statutory right of access generally prevails over the Act's general exceptions to disclosure. *See* 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 access provided under section 550.065 of the Transportation Code and the confidentiality provided under section 552.130. 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 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 550.065 specifically provides access only to accident reports of the type at issue in this request, 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 is more specific than the general confidentiality provided under section 552.130. Accordingly, the department may not withhold any portion of the CR-3 accident report form under section 552.130. Therefore, the department must release the CR-3 accident report form in its entirety to this requestor pursuant to section 550.065(c)(4).

You raise section 552.101 of the Government Code in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010), for the birth date of a peace officer. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. In *Texas Comptroller*, the Texas Supreme Court held section 552.102(a) of the Government Code excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. 354 S.W.3d at 336. Accordingly, *Texas Comptroller* applies only to a public employee's birth date maintained by the employer in an employment context. In this instance, the birth date of the peace officer at issue is held in law enforcement records maintained by the department, not employment records. Therefore, we conclude the department may not withhold the marked birth date under section 552.101 of the Government Code.

Section 552.101 of the Government Code encompasses 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 demonstrated. *See id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *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) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Some of the submitted information, which we have marked, as well as information in the video and audio recordings relates to an individual who states he is a peace officer employed by another police department. Accordingly, to the extent the individual at issue is a peace officer and elects to restrict access to his marked information and the noted information in the video and audio recordings in accordance with

section 552.1175(b), the department must withhold the information pertaining to that officer under section 552.1175 of the Government Code. Conversely, if the individual at issue is not a peace officer or does not elect to restrict access to his marked and noted information in accordance with section 552.1175(b), the information pertaining to that individual may not be withheld under section 552.1175.

As noted above, 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 id.* § 552.130. Upon review, we find portions of the submitted information consist of motor vehicle record information. We note a portion of the motor vehicle record information you have marked belongs to the requestor. Section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld 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 No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department must withhold the motor vehicle record information we have marked as well as the motor vehicle record information we have noted in the video and audio recordings under section 552.130 of the Government Code.

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." 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 id.* § 552.136(a) (defining "access device"). Section 552.136 also protects privacy. We note some of the information you have marked belongs to the requestor. As such, the requestor has a right of access to her own information pursuant to section 552.023 of the Government Code, and it may not be withheld under section 552.136. *See id.* § 552.023; ORD 481 at 4. Accordingly, the department must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov't Code § 552.147. Section 552.147 is based on privacy principles. In this instance, a portion of the information you marked is the requestor's social security number. The requestor has a right of access to her own social security number, and it may not be withheld from her under section 552.147 of the

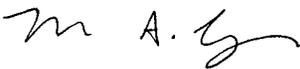
Government Code. *See id.* § 552.023(b). The department may withhold the remaining social security numbers we have marked under section 552.147 of the Government Code.²

In summary, the department must release the submitted CR-3 accident report form in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual at issue is a peace officer and elects to restrict access to the information we have marked and the information we have noted in the video and audio recordings, the department must withhold that individual's information under section 552.1175 of the Government Code. The department must also withhold the motor vehicle information we have marked and the motor vehicle record information we have noted in the video and audio recordings under section 552.130 of the Government Code and the insurance policy number we have marked under section 552.136 of the Government Code. The department may withhold the social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

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²We 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).

Ref: ID# 484338

Enc. Submitted documents

c: Requestor
(w/o enclosures)