



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2014

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-09485

Dear Ms. Mares:

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# 524567 (McKinney ORR#10-9797).

The McKinney Police Department (the "department"), which you represent, received a request for information regarding a specified incident. 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. We also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments stating why requested information should or should not be released).

We first note the submitted discs contain video recordings which cannot be viewed by this office. As this office cannot review the submitted videos, we conclude you have failed to comply with the requirements of section 552.301 of the Government Code with respect to that information. *See id.* § 552.301(e)(1)(D). Under section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the presumption the information is public and must be released, unless there is a compelling reason to withhold the information. *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, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists when the information is confidential by law or third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.101 and 552.130 of the

Government Code can provide compelling reasons to overcome the presumption of openness; however, because this office is unable to review the submitted videos at issue, we have no basis to conclude the information is confidential by law. Therefore, we have no choice but to order the department to release that information. However, we note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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). Accordingly, to the extent the videos at issue contain motor vehicle record information, the department is authorized to withhold such information under section 552.130(c) of the Government Code. If you maintain a legible or audible copy of the information on the discs and believe any other information contained therein is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below pursuant to section 552.324 of the Government Code.

Next, we note the submitted information includes a CR-3 accident report that was completed pursuant to chapter 550 of the Transportation Code. *See Transp. Code* § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this instance, the requestor has provided the department with the requisite pieces of information pursuant to section 550.065(c)(4). You seek to withhold this information under section 552.101 in conjunction with common-law privacy. However, when a statute directly conflicts with a common-law principle or claim, the statutory provision controls and preempts 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 the statute directly conflicts with common law principle); *CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, the department may not withhold the CR-3 accident report under section 552.101 of the Government Code in conjunction with common-law privacy.

We also understand you to 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). A statutory right of access generally prevails over the Act's general exceptions to disclosure. *See Open Record Decision Nos. 613 at 4* (1993), 451 (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 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 to this requestor pursuant to section 550.065(c)(4).

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, 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual’s privacy. You seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the entirety of the submitted information under section 552.101 of the Government Code on that basis. Additionally, we note the requestor is an attorney for the individual whose privacy interests are at issue in the submitted information and is acting as that individual’s authorized representative. Accordingly, the requestor has a right of access to her client’s information pursuant to section 552.023 of the Government Code. *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 (1987) (privacy theories not implicated when individual requests

information concerning herself). Therefore, the department may not withhold information pertaining to the requestor's client under section 552.101 of the Government Code in conjunction with common-law privacy. Additionally, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold it under section 552.101 in conjunction with common-law privacy.

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. Section 552.130 protects privacy interests. As noted above, the requestor has a right of access to her client's information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a), ORD 481 at 4. Therefore, the department may not withhold the requestor's client's motor vehicle record information in the remaining information under section 552.130 of the Government Code. The department must withhold the driver's license information of an individual who is not the requestor's client, which we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.130 of the Government Code and release the remaining information to the requestor.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

Ref: ID# 524567

Enc. Submitted documents

c: Requestor
(w/o enclosures)