



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2015

Ms. Victoria D. Honey
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2015-09651

Dear Ms. Honey:

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# 562546 (COFW PIR No. W040457).

The City of Fort Worth (the "city") received a request for photographs related to a specified incident. The city states it will release some information. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.1085 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

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. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 provides information that "relates to a motor vehicle accident reported under [chapter 550]" 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. Transp. Code § 550.065(a)-(b). 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). A governmental entity may release information related to a reported accident only in accordance with subsections (c) and (e). *Id.* § 550.065(c), (e). Section 550.065(c)(4)

provides a governmental entity shall release such information 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 address or the highway or street where the accident occurred. *Id.* § 550.065(c)(4).

In *City of San Antonio v. Abbott*, the court of appeals considered the applicability of section 550.065 to certain information related to an accident. 432 S.W.3d 429 (Tex. App.—Austin 2014, pet. denied). The information at issue consisted of call-for-service and dispatch logs, and the requestor did not provide the requisite information pursuant to section 550.065(c)(4) to obtain the logs. The city argued the plain meaning of the phrase, “information that . . . relates to a motor vehicle accident” in section 550.065 includes *any* information pertaining to an accident reported under chapter 550, and thus, encompasses the information in its logs. Thus, the city contended the logs are confidential because the information relates to motor vehicle accidents reported under chapter 550. The court of appeals agreed with the city’s interpretation of section 550.065. The court held the phrase “relates to” is “very broad” and the Legislature’s use of the phrase “has the effect of broadening the scope of [s]ection 550.065 to render more than the actual accident reports confidential.” *Id.* at 432. Because the court found the language in section 550.065 to be unambiguous and encompass more than the actual accident report required to be filed under chapter 550, it concluded the city’s call-for-service and dispatch logs are confidential under section 550.065(b) of the Transportation Code. Relying on the court’s interpretation of the broad scope of section 550.065, we construe the converse to be true when the requestor does provide the requisite information pursuant to section 550.065(c)(4). Thus, based on the court’s rationale, when a person provides two of the required pieces of information to a governmental entity, it must release any information that relates to a motor vehicle accident required to be reported under chapter 550. Such a release is not limited to the accident report itself. *Id.* at 433.

The city informs us the requested information relates to a motor vehicle accident required to be reported under chapter 550 because it resulted in the death of a person and damage to the property of a person in an amount that exceeds \$1,000. Further, we note the requestor has provided the city with the requisite information. Although the city asserts the submitted information is subject to section 552.101 of the Government Code in conjunction with common-law privacy, 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). Thus, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

The city also asserts section 552.1085 for the submitted photographs. Section 552.1085 of the Government Code, provides, in pertinent part:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

Gov't Code § 552.1085(c). We note, as a general rule, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Attorney General Opinion DM-146 at 3 (1992); *see also* 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 exceptions to disclosure under the Act). Because section 552.1085 has its own access provisions, we conclude section 552.1085 is not a general exception under the Act. Thus, we must address the applicability of section 552.1085 to the submitted information.

For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See* Gov't Code § 552.1085(a)(6). The city indicates the submitted photographs are contained in or part of a closed criminal case. Upon review, we find most of the submitted photographs, which we have indicated, consist of sensitive crime scene images. The city informs us none of the access provisions in section 552.1085 apply. Accordingly, the photographs we have indicated are confidential under section 552.1085 of the Government Code. However, we find the remaining photograph does not consist of a sensitive crime scene image for the purposes of section 552.1085. Thus, the city may not withhold this photograph under section 552.1085 of the Government Code.

Because some of the submitted information is specifically protected from public disclosure by section 552.1085 of the Government Code, we find there is a conflict between this provision and the access provided under section 550.065(c)(4) of the Transportation Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *see also* *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Section 550.065 generally governs the release of all information relating to a motor vehicle accident reported under chapter 550, while section 552.1085 specifically excepts certain crime scene images contained in or part of a closed criminal case. Thus, we conclude the confidentiality provided under section 552.1085(c) is more specific than the general access

provided under section 550.065(c)(4). Accordingly, the city must withhold the photographs we have indicated under section 552.1085 of the Government Code. The city must release the remaining information.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 562546

Enc. Submitted documents

c: Requestor
(w/o enclosures)