



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2016

Ms. Laura Rodriguez McLean
Counsel for Carroll Independent School District
Walsh Gallegos Treviño Russo & Kyle P.C.
P.O. Box 168046
Irving, Texas 75016

OR2016-08527

Dear Ms. McLean:

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# 608580.

The Carroll Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state you will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining

¹Although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

²A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

“personally identifiable information”). You have submitted redacted education records for our review. Because our office is prohibited from reviewing these education records to determine the applicability of FERPA, we will not address the applicability of FERPA to any of the submitted records, other than to note that parents have a right of access under FERPA to their own children’s education records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also Equal Employment Opportunity Comm’n v. City of Orange Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (holding FERPA prevails over inconsistent provision of state law). Such determinations under FERPA must be made by the educational authority in possession of the education records.

Next, we note the submitted information includes a CR-3 accident report. Section 552.101 of the Government Code exempts 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 of the Transportation Code 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 may 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).

Here, the requestor is a person listed under section 550.065(c). Although you raise section 552.101 of the Government Code in conjunction with common-law privacy, we note a specific 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). Thus, the district may not withhold any portion of the submitted accident report under section 552.101 in conjunction with common-law privacy. You also raise sections 552.117 and 552.136 of the Government Code for some of this information. However, a statutory right of access prevails over the Act’s general exceptions to public 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 sections 552.117 and 552.136 are general exceptions under the Act, the requestor’s statutory access under section 550.065(c) prevails and the district may not withhold any of the information at issue under section 552.117 or section 552.136 of the Government Code.

You also assert portions of the accident report are confidential under section 552.130 of the Government Code. Section 552.130 exempts 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 country. 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 ORD 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 confidentiality provided under section 552.130 of the Government Code and the right of access provided under section 550.065(c) of the Transportation Code for the accident report. 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. Section 550.065(c) specifically provides access only to accident reports of the type at issue, 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(c) is more specific than the general confidentiality provided under section 552.130. Accordingly, the district may not withhold any portion of the accident report under section 552.130. Thus, the district must release the CR-3 accident report to the requestor pursuant to section 550.065(c).

Section 552.101 of the Government Code also 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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See, e.g., Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, we note an individual's name, address, and telephone number are generally not private information under common-law privacy. See Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not invasion of privacy). Upon review, we find the insurance company name you have marked in the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information at issue is highly intimate or

embarrassing and of no legitimate public interest. Therefore, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code on this basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the individual at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information you have marked in the remaining information under section 552.117(a)(1) of the Government Code. However, if the individual did not timely request confidentiality under section 552.024, then the district may not withhold this information under section 552.117(a)(1).

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(a). Some of the information at issue, which we have marked for release, does not constitute motor vehicle record information. Thus, except for the information we have marked for release, the district must withhold the motor vehicle record information you have marked in the remaining information under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "Notwithstanding 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). Upon review, we find the district must withhold the insurance policy number you have marked in the remaining information under section 552.136 of the Government Code.

In summary, if the district determines all or portions of the requested information consist of "education records" that must be withheld under FERPA, then the district must dispose of any such information in accordance with FERPA, rather than the Act. The district must release the CR-3 accident report to the requestor pursuant to section 550.065(c) of the Transportation Code. The district must withhold the insurance company name you have marked in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual at issue timely requested

confidentiality under section 552.024 of the Government Code, the district must withhold the information you have marked in the remaining information under section 552.117(a)(1) of the Government Code. However, if the individual did not timely request confidentiality under section 552.024, then the district may not withhold this information under section 552.117(a)(1). Except for the information we have marked for release, the district must withhold the motor vehicle record information you have marked in the remaining information under section 552.130 of the Government Code. The district must withhold the insurance policy number you have marked in the remaining information under section 552.136 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.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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 608580

Enc. Submitted documents

c: Requestor
(w/o enclosures)