



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2012

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2012-06275

Dear Ms. Sims:

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# 452261.

The Lubbock Police Department (the "department") received a request for copies of all documents and information concerning investigations involving a specified intersection for a specified period of time. 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.

Initially, we note some of the submitted information is not responsive because it was created after the date the department received the instant request. The department need not release this information, which we have marked, in response to this request, and this ruling will not address it.

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 made confidential by other statutes. Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. 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) 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). In this instance, the requestor has provided the department with two of the three requisite pieces of information for only one of the submitted accident reports. Therefore, the department must release this accident report, which we have marked for release, pursuant to

section 550.065(c)(4) of the Transportation Code. However, the requestor has not provided the department with two of the three requisite pieces of information for any of the remaining accident reports. Accordingly, the department must withhold the remaining accident reports, which we have marked, under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. Further, we find you have not established the remaining responsive information consists of accident reports that were completed pursuant to chapter 550. Thus, the department may not withhold any of the remaining responsive information pursuant to section 550.065.

You also assert portions of the accident report we have marked for release 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 Records Decision Nos. 623 at 3 (1994) (exceptions in Act in applicable to information that statutes expressly make public), 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).* 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); *Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986).*

In this instance, section 550.065 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 is more specific than the general confidentiality provided under section 552.130. Accordingly, the department may not withhold any portion of the accident report we have marked for release under section 552.130. Therefore, the department must release this accident report in its entirety to the requestor pursuant to section 550.065(c)(4).

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See Open Records Decision No. 373 (1983).* This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between

the individual and a governmental body is generally excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the department must withhold the information we have marked and indicated under section 552.101 in conjunction with common-law privacy.

As discussed above, section 552.130 of the Government Code excepts from disclosure “information [that] relates to (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]” Gov’t Code § 552.130(a)(1)-(2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. As such, the requestor has a right of access to his clients’ motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds 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). In addition, we note the right of privacy is a personal right that lapses at death. *See Moore v. Charles B Pierce Film Enters, Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491. Upon review, we find the department must generally withhold the information we have marked and indicated under section 552.130 of the Government Code. However, we note that some of the motor vehicle record information at issue relates to vehicles that were owned by individuals who are now deceased. Accordingly, the information that pertains to the deceased individuals’ vehicles may only be withheld under section 552.130 if living persons own an interest in the vehicles at issue. If no living persons own an interest in any of the vehicles at issue, then the information relating to these vehicles are not excepted from disclosure and must be released. Regardless, the department must withhold the remaining motor vehicle record information at issue under section 552.130 of the Government Code.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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.”¹ Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device for purposes of section 552.136. Upon review, we find the department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Upon review, we find the e-mail address we have marked is not of a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to disclosure.²

In summary, the department must release the accident report we have marked for release pursuant to section 550.065(c)(4) of the Transportation Code. The department must withhold the remaining accident reports, which we have marked, under section 550.065(b) of the Transportation Code in conjunction with section 552.101 of the Government Code. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The motor vehicle record information that pertains to the deceased individuals’ vehicles may only be withheld under section 552.130 of the Government Code if living persons own an interest in the vehicles at issue. Regardless, the department must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to disclosure. The department must release the remaining responsive information.³

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.

²We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

³As noted, the requestor has a right of access to his clients’ motor vehicle record information being released. *See* Gov’t Code § 552.023(a). If the department receives another request for this information from an individual other than this requestor, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Furthermore, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body’s decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 452261

Enc. Submitted documents

c: Requestor
(w/o enclosures)