



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2012

Ms. Michele Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-14384A

Dear Ms. Tapia:

Our office issued Open Records Letter No. 2012-14384 (2012) on September 11, 2012. In that ruling, we found, in part, that the Carrollton Police Department (the "department") must withhold the license plate number we indicated in Exhibit F. In a subsequent communication with our office, you informed us the department lacks the technological capability to redact this information from Exhibit F. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on September 11, 2012. *See* Gov't Code § 552.011 (providing Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 473220.

The department received a request for eleven categories of information pertaining to a specified incident. You claim portions of the submitted information are 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 note Exhibit D consists of 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 that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065(b). 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). 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. *Id.* In this case, the requestor has provided the department with the requisite pieces of information pursuant to section 550.065(c)(4).

You seek to withhold the highlighted portions of Exhibit D under section 552.130 of the Government Code, which provides that 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 is excepted from public release. Gov't Code § 552.130(a). We note a statutory right of access generally prevails over the Act's exceptions to public disclosure. *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). 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, 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 and must release Exhibit D in its entirety pursuant to section 550.065(c)(4) of the Transportation Code.

However, we note portions of the remaining information are subject to section 552.130 of the Government Code. The license plate number in the video recording submitted as Exhibit F is subject to section 552.130 of the Government Code. You inform us the department does not have the technological capability to redact the portion of the video recording that contains the license plate number at issue. Based on this representation, we conclude the department must withhold Exhibit F in its entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 at 2 (1983). We have also marked a license plate number in Exhibit C. We note section 552.130 protects personal privacy, and the requestor may be an authorized representative of the individual whose license plate number is at issue in Exhibit C. If so, the requestor would have a right of access to the individual's private

information under section 552.023 of the Government Code.¹ See Gov't Code § 552.023. Therefore, if the requestor is the authorized representative of the individual concerned, then the individual's license plate number may not be withheld from the requestor under section 552.130 of the Government Code. See Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated if individual requests information concerning himself). If the requestor is not the individual's authorized representative, then the department must withhold the license plate number we have marked in Exhibit C under section 552.130.

You also raise section 552.101 of the Government Code in conjunction with the informer's privilege for portions of Exhibit C. 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. This exception encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You state Exhibit C contains personally identifying information of an individual who reported the accident to the department. However, you have not identified any specific law alleged to have been violated, nor have you explained whether any alleged violation carries civil or criminal penalties. Accordingly, the department has failed to demonstrate that the informer's privilege is applicable to any of the information at issue. Thus, we conclude that the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the informer's privilege.

In summary, the department must release Exhibit D in its entirety pursuant to section 550.065(c)(4) of the Transportation Code. The department must withhold Exhibit F in its entirety under section 552.130 of the Government Code. If the requestor does not have a right of access to the information, the department must withhold the license plate

¹Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

number we have marked in Exhibit C under section 552.130 of the Government Code. The remaining information must be released.²

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 473220

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As discussed above, the requestor may have a right of access to some of the information being released in this instance. See Gov't Code § 552.023. Because such information would be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department must again seek a decision from this office.