



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2014

Ms. M. Ann Montgomery-Moran
Assistant Ellis County and District Attorney
Ellis County and District Attorney's Office
109 South Jackson
Waxahachie, Texas 75165

OR2014-13022

Dear Ms. Montgomery-Moran:

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# 532949.

The Ellis County and District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified arrest and the criminal history of a named individual. We understand the district attorney's office is withholding social security numbers pursuant to section 552.147 of the Government Code. *See Gov't Code* § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision from this office under the Act). The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information contains CR-3 accident report forms that were 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 (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) the date of the accident; (2) the name of any person involved in the accident; and (3) the 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.¹ *Id.* The requestor has provided the district attorney's office with the date of and the name of a person involved in the accident pursuant to section 550.065(c)(4). Although you raise section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information, we note a statutory right of access prevails over the common-law. *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). However, you also raise section 552.130 of the Government Code for the submitted information. Section 552.130 has its own access provisions and, thus, is not a general exception under the Act. Accordingly, 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. 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. Therefore, the district attorney's office may not withhold any portion of the CR-3 accident reports under section 552.130. Accordingly, the district attorney's office must release the accidents reports you have marked in their entirety pursuant to section 550.065 of the Transportation Code

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 the doctrine of 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. *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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). A compilation of an individual's criminal history is highly embarrassing information, the

¹Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The requestor asks for criminal history held by the district attorney's office concerning a named individual; however, the requestor also asks for information pertaining to a specific arrest. The submitted information pertains to the specified arrest. Accordingly because the requestor specifically requested the submitted information, it is not part of a compilation of the individual's criminal history and may not be withheld on that basis. Nevertheless, we find some of the submitted information otherwise satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district attorney's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the district attorney's office may not withhold it under section 552.101 on that ground.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See Gov't Code § 552.1175*. The district attorney's office must withhold the information we have marked under section 552.1175 if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the district attorney's office may not withhold this information under section 552.1175 if the individual either is not a currently licensed peace officer or does not elect to restrict access to this information in accordance with section 552.1175(b).

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 id.* § 552.130. The district attorney's office must withhold the motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

To conclude, the district attorney's office must release the accident reports you have marked pursuant to section 550.065 of the Transportation Code. The district attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information marked under section 552.130 of the Government Code. The district attorney's office must also withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue

is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The district attorney's office 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 532949

Enc. Submitted documents

c: Requestor
(w/o enclosures)