



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 30, 2015

Ms. Marie N. Rovira  
Counsel for the City of Murphy  
Messer, Rockefeller & Fort, PLLC  
6351 Preston Road, Suite 350  
Frisco, Texas 75034

OR2015-22772

Dear Ms. Rovira:

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# 585243 (ORR# W002049-081015).

The City of Murphy (the "city"), which you represent, received a request for information submitted to the city pertaining to a specified special use permit at a specified address, any correspondence received or sent by city employees or officials pertaining to the specified special use permit, and all incident reports related to the specified address over a specified time period. You state you have released some information to the requestor. We understand the city will redact personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 section encompasses information protected by other statutes, such as chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications

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<sup>1</sup>We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. Health & Safety Code § 772.304.

You state the city is part of an emergency communication district established under chapter 772. You also explain the information at issue was furnished by a service supplier. Accordingly, the city must withhold the originating telephone numbers and addresses of 9-1-1 callers you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, you have also marked the longitude and latitude of the 9-1-1 caller. We note the plain language of section 772.318 states that confidentiality applies to only originating telephone numbers and the addresses associated with those numbers. See *id.* § 772.318(a), (c); Open Records Decision Nos. 649 at 3 (1996) (section 772.318 makes confidential current telephone numbers of subscribers and the addresses associated with the numbers and nothing more), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, none of the remaining information you have marked may be withheld under section 552.101 on the basis of section 772.318.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Furthermore, in considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>2</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the

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<sup>2</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. The remaining information contains the dates of birth of public citizens. Furthermore, some of the remaining information also satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*.

Accordingly, upon review, we find the city must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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.<sup>3</sup> See Gov't Code § 552.130(a). The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the originating telephone numbers and addresses of 9-1-1 callers you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold all public citizens' dates of birth, as well as the information we have marked, in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 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/>

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[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,

A handwritten signature in black ink, appearing to read 'J. Behnke', with a long horizontal stroke extending to the right.

Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 585243

Enc. Submitted documents

c: Requestor  
(w/o enclosures)