



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2015

Ms. Heather Silver  
Assistant City Attorney  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2015-27009

Dear Ms. Silver:

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# 591661.

The City of Dallas (the "city") received a request for certain response e-mails sent by the city's fire department during a specified time period. You state the city will release some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

---

<sup>1</sup>We note, and the city acknowledges, the city did not comply with the requirements of section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). Nevertheless, because section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider the city's claim under section 552.101. *See id.* §§ 552.007, .302.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.101 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). Upon review, we find the city has failed to demonstrate any portion of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. As the city does not raise another exception to disclosure, the city must release the submitted 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](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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 591661

Enc. Submitted documents

c: Requestor  
(w/o enclosures)