



KEN PAXTON

ATTORNEY GENERAL OF TEXAS

July 27, 2016

Mr. Nicholas Toulet  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79701

OR2016-16844

Dear Mr. Toulet:

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# 620546 (ID# 19461).

The Midland Fire Department (the "department") received a request for records of all fires that occurred at a specified address over a specified time period. You state you have released some information. We understand you will redact motor vehicle record information pursuant to section 552.130 of the Government Code, the originating telephone numbers of 9-1-1 callers pursuant to the previous determination issued to the department in Open Records Letter No. 2015-23311 (2015), and public citizens' dates of birth pursuant to the previous determination issued to the department in Open Records Letter No. 2015-26022 (2015).<sup>1</sup> You claim portions of the submitted information are 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code

---

<sup>1</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Letter No. 2015-23311 is a previous determination issued to the City of Midland authorizing it to withhold the originating telephone numbers of 9-1-1 callers furnished to it by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code). Open Records Letter No. 2015-26022 is a previous determination issued to the department authorizing the department to withhold dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See id.* § 552.301(a); ORD 673.

§ 552.101. 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 or 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 you have failed to demonstrate the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold the information you have marked under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, the department 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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bhf

Ref: ID# 620546

Enc. Submitted documents

c: Requestor  
(w/o enclosures)