



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 3, 2016

Ms. S. McClellan  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2016-24525

Dear Ms. McClellan:

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# 632959 (DPD Request No. 2016-13380).

The Dallas Police Department (the "department") received a request for information pertaining to two specified incident reports. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note you seek to withhold the telephone number of a 9-1-1 caller under section 772.318 of the Health and Safety Code. In Open Records Letter No. 2011-17075 (2011), this office issued a previous determination to the department authorizing it to withhold the originating telephone number of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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* Gov't Code § 552.301(a); ORD 673. Provided the originating telephone number of the 9-1-1 caller at issue was furnished by a service supplier established in accordance with chapter 772, the department must withhold the telephone number you have marked in accordance with the previous determination issued in Open Records Letter No. 2011-17075. However, we note the caller provided his telephone number on the submitted audio recording. As this information was not furnished by a 9-1-1 service supplier, it is not subject to the previous determination and may not be withheld on that basis.

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. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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 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. We note the requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code 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. *See* Gov't Code § 552.130(a). We note the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of

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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).

the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the department may not withhold the requestor's motor vehicle record information you have marked under section 552.130 of the Government Code, and it must be released to the requestor.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You state the department employee identification numbers you have marked are the same numbers used to access the employees' credit union bank accounts. Based on your representation, we find the employee identification numbers you marked consist of access device numbers for the purposes of section 552.136. Additionally, this office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See* Open Records Decision No. 684 (2009). We note, however, the insurance policy number you have marked is the requestor's insurance policy number. Because section 552.136 protects personal privacy, the requestor has a right of access to her own insurance policy number under section 552.023 of the Government Code, and this information may not be withheld from her under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. Thus, with the exception of the requestor's insurance policy number, the department must withhold the information you have marked under section 552.136 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of enumerated individuals who request this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a). We note section 552.117 applies only to information held by a governmental body in an employment context. Thus, information that is not held in an employment context may not be withheld under section 552.117. Upon review, we find the department does not hold the telephone number you seek to withhold in the submitted audio recording in an employment context. Thus, the department may not withhold the information at issue under section 552.117 of the Government Code.

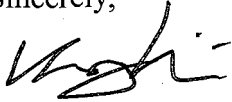
In summary, provided the originating telephone number of the 9-1-1 caller at issue was furnished by a service supplier established in accordance with chapter 772, the department must withhold the telephone number you marked in accordance with the previous determination issued in Open Records Letter No. 2011-17075. With the exception of the requestor's date of birth, which must be released, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the requestor's motor vehicle record information pursuant to section 552.023 of the Government Code. With the exception of the requestor's insurance policy number, which must be released, the department must withhold

the information you have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.<sup>3</sup>

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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

Ref: ID# 632959

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup> We note that because the requestor has a special right of access to some of the information being released in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.