



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 9, 2016

Ms. Marie N. Rovira
Counsel for the Town of Addison
Messer, Rockefeller & Fort, P.L.L.C
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2016-27305

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# 637086 (Internal Ref. No. W004380-091516).

The Town of Addison (the "town"), which you represent, received a request for all information pertaining to two named individuals at a specified address during a certain time period. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.¹ We have considered the exceptions 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 § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing

¹Although you do not raise section 552.130 of the Government Code in your brief, we understand you to claim this exception based on your markings. Additionally, we note, and you acknowledge, the town did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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. Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

The present request requires the town to compile unspecified law enforcement records concerning the individuals named in the request, and thus, implicates the named individuals' right to privacy. Therefore, to the extent the town maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted information that does not list either of the named individuals as suspects, arrestees, or criminal defendants. This information is not part of a compilation of the individuals' criminal history and the town may not withhold it under section 552.101 of the Government Code in conjunction with common-law privacy on that basis. We will consider your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.118 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 3.3 million and makes confidential the originating telephone numbers and addresses of 9-1-1 callers provided by a service supplier. *See* Health & Safety Code §§ 772.104, .118; *see also* Open Records Decision No. 649 at 2 (1996). You argue the information you have marked should be withheld under section 772.118. The town is in Dallas County, which we understand has a population over 3.3 million, and you inform us the town is part of an emergency communication district established under section 772.118. We note you have marked addresses that are the locations of the incidents at issue. Such addresses are not the originating address of a 9-1-1 caller and therefore may not be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. However, the town must withhold the telephone numbers and the originating addresses of the 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code, if they were furnished by a 9-1-1 service supplier. If the telephone numbers and the

originating addresses of the 9-1-1 callers were not provided by a 9-1-1 service supplier, they may not be withheld under section 552.101 in conjunction with section 772.118.

As noted above, section 552.101 encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the town may not withhold the remaining information 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. Accordingly, the town must withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code.

We note a portion of the remaining information is subject to section 552.136 of the Government Code.² Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, 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." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). 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). Accordingly, the town must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

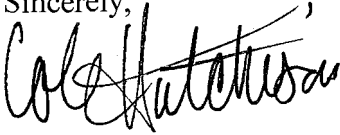
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the town maintains law enforcement records depicting the named individuals as suspects, arrestees, or criminal defendants, the town must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the telephone numbers and the originating addresses of the 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code, if they were furnished by a 9-1-1 service supplier. The town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code. The town must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The town 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 637086

Enc. Submitted documents

c: Requestor
(w/o enclosures)