



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2017

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-14465

Dear Mr. Kopp:

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# 663977 (COSA File No. W164749).

The City of San Antonio (the "city") received a request for a specified police report. You state you will redact information pursuant to sections 552.130(c) and 552.136(c) of the Government Code, as well as the dates of birth of public citizens pursuant to Open Records Letter No. 2016-08566 (2016).¹ 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 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

¹Section 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). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Letter No. 2016-08566 is a previous determination authorizing the city to withhold the 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); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). We understand the city is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You indicate the telephone number you marked under section 772.318 is the originating telephone number of a 9-1-1 caller. Provided the information at issue was furnished by a service supplier, we agree the city must withhold the telephone number you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information protected by the federal Driver's Privacy Protection Act of 1994 (the "DPPA"), section 2721 of title 18 of the United States Code. Section 2721 provides, in part:

(a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section[.]

...

(b) Permissible uses.—Personal information referred to in subsection (a) . . . may be disclosed as follows:

(1) For use by any government agency, including any . . . law enforcement agency, in carrying out its functions[.]

...

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a

recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a)(1), (b)(1), (13), (c). The DPPA defines “motor vehicle record,” in relevant part, as “any record that pertains to a motor vehicle operator’s permit . . . issued by a department of motor vehicles[.]” *Id.* § 2725(1). Section 2725 also defines personal information as “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address, (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.” *See id.* § 2725(3).

You assert the remaining information contains personal information obtained from the Texas Department of Public Safety (“DPS”) that is protected under the DPPA. We note this office has concluded the DPPA applies to information in the possession of DPS. Attorney General Opinion JC-0499 at 1 (2002). You explain the city obtained the personal information for use in carrying out its functions with regard to law enforcement.

Based upon your representations and our review, we find the city, in obtaining personal information from DPS to assist the city in carrying out its law enforcement functions, is an authorized recipient of personal information for purposes of section 2721(c). *See* 18 U.S.C. § 2721(b)(1) (providing that personal information may be disclosed by a state department of motor vehicles to any entity acting on behalf of a Federal, State, or local agency in carrying out its functions). Therefore, we conclude the information we marked is personal information obtained from DPS by an authorized recipient and is generally confidential under section 2721 of title 18 of the United States Code. However, an authorized recipient of personal information for purposes of section 2721(c) may only resell or redisclose the information for a use permitted under subsection (b), but not for uses under subsections (b)(11) or (b)(12). *See id.* § 2721(c). Section 2721(b)(13) provides for the permissible release of personal information subject to the DPPA if the requestor demonstrates he has obtained the written consent of the individual to whom the information pertains. *See id.* § 2721(b)(13). In this instance, the requestor is one of the individuals to whom the information pertains. Therefore, the city has the discretion to release the requestor’s information at issue pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. *See id.* § 2721 (b)(13), (c). Otherwise the city must withhold the requestor’s information at issue under section 552.101 of the Government Code in conjunction with section 2721 of title 18 of the United States Code. In either case, as we have no indication that release of the remaining information at issue would be for a use permitted under section 2721(b), we conclude the city must withhold the information pertaining to other individuals, which we marked, under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. *See id.* § 2721(a)(1). However, we find no portion of the remaining information consists of personal information

obtained from the DPS and it may not be withheld under section 552.101 of the Government Code on that basis.

In summary, provided the information at issue was furnished by a service supplier, we agree the city must withhold the telephone number you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The marked personal information must generally be withheld under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code, but the city has the discretion to release the marked information pertaining to the requestor pursuant to subsections 2721(c) and (b)(13) of title 18 of the United States Code. Either way, the city must withhold the marked information pertaining to individuals other than the requestor under section 552.101 of the Government Code in conjunction with section 2721(a) of title 18 of the United States Code. The city must release the remaining information.²

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/nmd

²We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a)(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). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.

Ref: ID# 663977

Enc. Submitted documents

c: Requestor
(w/o enclosures)