



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Mr. Brandon S. Shelby
City Attorney
City of Sherman
P.O. Box 1106
Sherman, Texas 75091

OR2017-15205

Dear Mr. Shelby:

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# 665293 (Ref. No. OR-2826 - SPD#075).

The Sherman Police Department (the "department") received a request for information pertaining to calls, call notes, and radio communications during a specified time period. You claim 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 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. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts

¹Although you also raise section 552.103 of the Government Code, you provide no arguments explaining why this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302. Although you also cite section 552.108(5)(e) of the Government Code as an exception to disclosure, we note this section does not exist. Based on the substance of your argument, we understand you to raise section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

established in accordance with chapter 772. See Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand the department is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You seek to withhold information pertaining to 9-1-1 callers within the submitted documents. Upon review, we conclude that, to the extent the telephone number we marked was furnished by a 9-1-1 service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. However, if the information at issue was not furnished by a 9-1-1 service supplier, then the department may not withhold this information under section 552.101 on the basis of section 772.318 of the Health and Safety Code. Nevertheless, you have not demonstrated the remaining information consists of the originating telephone number or address of 9-1-1 callers that are furnished by a 9-1-1 service supplier. Accordingly, the department may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also 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). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *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.). Upon review, we conclude some of the submitted information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we indicated and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of 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 department must

withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code.

In summary, to the extent the telephone number we marked was furnished by a 9-1-1 service supplier, the department must withhold the marked telephone number under section 552.101 in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information we indicated and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we marked and indicated under section 552.130 of the Government Code. The department 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 665293

Enc. Submitted documents

c: Requestor
(w/o enclosures)