



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 10, 2017

Mr. Will Trevino
Counsel for City of Van Alstyne
Messer Rockefeller Fort
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2017-15277

Dear Mr. Trevino:

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# 665291.

The Van Alstyne Police Department (the "department"), which you represent, received two requests from different requestors for information pertaining to a specified motor vehicle accident. You state you released some information to the requestors. You claim portions of the submitted information are 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. 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

¹Although you do not cite to section 552.130 of the Government Code in your brief to this office, we understand you to raise this section based on your markings.

of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996).

You state the department is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You marked a telephone number you seek to withhold. We conclude the department 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 if it consists of the originating telephone number furnished by a 9-1-1 service supplier. If this information does not consist of the originating telephone number provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.318. You further assert the submitted audio recording contains the originating telephone number of a 9-1-1 caller. However, this information was provided directly by the 9-1-1 caller at issue. Thus, we find no portion of the submitted audio recording consists of the originating telephone number of a 9-1-1 caller that was furnished by a 9-1-1 service supplier. Accordingly, no portion of the submitted audio recording may be withheld under section 552.101 in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also 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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). Thus, the department must withhold the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

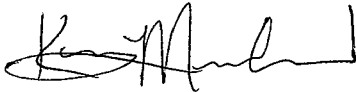
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Accordingly, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, to the extent it consists of the originating telephone number furnished by a 9-1-1 service supplier, the department 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 department must withhold the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The department must release the remaining information.

You ask this office to issue a previous determination that would permit the department to withhold information subject to section 772.318 of the Health and Safety Code without requesting a ruling from this office. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/sdk

Ref: ID# 665291

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)