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ATTORNEY GENERAL OF TEXAS

August 3, 2017

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar, 6TH Floor, 6W
Dallas, Texas 75215

OR2017-17401

Dear Ms. Armstrong:

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# 669322 (ORR# 2017-05165).

The Dallas Police Department (the "department") received a request for information pertaining to a specified incident. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

¹We note, and the department acknowledges, the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because sections 552.101, 552.130, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments for the submitted information. *See id.* §§ 552.007, .302, .352. Although the department does not raise section 552.130 of the Government Code in its brief, we understand the department to assert this exception based on its markings.

²We 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.

Initially, the department informs us the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-11917 (2017). In that ruling, we determined the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy because the requestor in that request knew the nature of the incident and the identity of the individual whose private information was at issue. In the instant request, however, there is no indication the requestor knows the nature of the incident. Thus, we find the circumstances have changed in regard to this information and the department may not rely on Open Records Letter No. 2017-11917 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will address the department's arguments against disclosure of 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 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 772.118 applies to an emergency communication district for a county with a population of more than 3.3 million. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. 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 established under section 772.218 of the Health and Safety Code. The department indicates the information it marked consists of the originating telephone number of a 9-1-1 caller. Provided the information at issue was furnished by a service supplier, we agree the department must withhold the telephone number it marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

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). Further, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The Third 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 find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 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 department must withhold the motor vehicle record information it marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We understand the employee identification number the department marked is used in conjunction with one additional digit to access City of Dallas credit union bank accounts. We therefore conclude the department must withhold the employee identification number it marked and the account number we marked under section 552.136 of the Government Code.

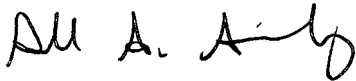
In summary, the department must withhold the telephone number it marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code provided it was furnished by a service supplier. The department must withhold all public citizens' dates of birth and the information we marked under

section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information it marked under section 552.130 of the Government Code. The department must withhold the employee identification number it marked and the account number we marked under section 552.136 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 669322

Enc. Submitted documents

c: Requestor
(w/o enclosures)