



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2017

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

OR2017-17466

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# 669410 (COSA File No. W168312).

The San Antonio Police Department (the "department") received a request for information pertaining to a specified incident. You state you have no information responsive to a portion of the request.¹ You claim 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 information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 773.091 of the Health and Safety Code, which provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).*

that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g): Upon review, we find the information we have marked consists of records made and maintained by emergency medical services personnel. Accordingly, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.²

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.).

Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. You seek to withhold the entirety of the remaining information under section 552.101 in conjunction with common-law privacy. Upon review, we find you have not demonstrated this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Nevertheless, we find some of the remaining information, which we marked, satisfies the

²As our ruling is dispositive, we need not address your argument against disclosure of this information.

standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note the requestor may be acting as the authorized representative of his spouse and, thus, may have a special right of access to her otherwise private information. See Gov't Code § 552.023(b) (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 individual requests information concerning himself). Accordingly, if the requestor is acting as the authorized representative of his spouse, the department may not withhold any of the information at issue under section 552.101 in conjunction with common-law privacy. However, if the requestor is not acting as the authorized representative of his spouse, then the department must withhold the information we 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 or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release.³ Gov't Code § 552.130. Upon review, we find the department must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. We note section 552.130 protects privacy interests. Thus, the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code. See *id.* § 552.023(a); ORD 481 at 4. Accordingly, the department may not withhold motor vehicle record information relating to the requestor under section 552.130. Furthermore, as noted above, the requestor may be acting as his spouse's authorized representative, and may have a right of access to information pertaining solely to her that would otherwise be confidential. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the requestor is acting as his spouse's authorized representative, then the department may not withhold any motor vehicle record information pertaining solely to the requestor's spouse from this requestor under section 552.130. However, if the requestor is not acting as his spouse's authorized representative, then the department must withhold any motor vehicle record information pertaining solely to the requestor's spouse, which we have marked, under section 552.130. In any event, the department must withhold the motor vehicle record information pertaining to any other individual, which we have marked, under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The department must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.130 of the Government Code; however, this information pertaining

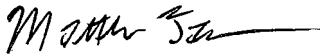
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to the requestor's spouse may not be withheld if the requestor is acting as his spouse's authorized representative. 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/bw

Ref: ID# 669410

Enc. Submitted documents

c: Requestor
(w/o enclosures)