



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2017

Ms. Ileana Fernandez
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2017-23876

Dear Ms. Fernandez:

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# 680482.

The Mesquite Police Department (the "department") received a request for a specified call sheet. The department states it will redact certain information in accordance with Open Records Letter Nos. 2011-15075 (2011) and 2011-15761 (2011).¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information.

The department states it will redact certain information pursuant to the previous determinations issued to the department in Open Records Letter Nos. 2012-01375

¹Open Records Letter Nos. 2011-15075 and 2011-15761 are previous determinations that authorize the department to withhold the originating telephone numbers and addresses, respectively, of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code without requesting a decision from this office.

²We understand the department to raise section 552.136 of the Government Code based on its markings.

(2012), 2012-06459 (2012), and 2015-24970 (2015).³ 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 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). This office has also 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). Further, in Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). 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*. We note this information contains private information and the date of birth of an individual who will be de-identified and whose privacy interest will, thus, be protected. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

³Open Records Letter Nos. 2012-01375 and 2012-06459 are previous determinations that authorize the department to withhold specified information under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. Open Records Letter No. 2015-24970 is a previous determination authorizing the department to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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, "[n]otwithstanding 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Accordingly, the department must withhold the insurance policy number it marked under section 552.136 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 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 insurance policy number it 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# 680482

Enc. Submitted documents

c: Requestor
(w/o enclosures)