



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 8, 2017

Ms. Dawn Bracket  
Counsel for the City of Mineral Wells  
Messer, Rockefeller & Fort, PLLC  
6371 Preston Road., Suite 200  
Frisco, Texas 75034

OR2017-25626

Dear Ms. Bracket:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 687817.

The City of Mineral Wells (the "city"), which you represent, received a request for information from January 2016 to the date of the request pertaining to a specified address. The city has redacted information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> The city claims some of the submitted information is excepted from public disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Section 552.101 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 that statutes make confidential such as section 773.091 of the Health and Safety Code, which provides:

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

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<sup>1</sup>Section 552.130(c) allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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

Health & Safety Code § 773.091(b). This confidentiality “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.” *Id.* § 773.091(g). The exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code do not apply in this instance. Accordingly, except for the information subject to section 773.091(g), the city must withhold the emergency medical services records we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.<sup>2</sup>

Next, the city asserts the date of birth it marked is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 city must withhold the public citizen’s date of birth it marked under section 552.101 of the Government Code.

In summary, the city must withhold the date of birth it marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, and except for information subject to section 773.091(g) of the Health and Safety Code, the city must withhold the emergency medical services records we marked pursuant to section 552.101 in conjunction with section 773.091(b). The city must release the remainder.

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](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

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<sup>2</sup>Because section 773.091(b) of the Health and Safety Code is dispositive, we do not address the city’s common-law privacy assertion under section 552.101 of the Government Code for this information.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/gw

Ref: ID# 687817

Enc. Marked documents

c: Requestor  
(w/o enclosures)