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ATTORNEY GENERAL OF TEXAS

December 8, 2017

Ms. Dawn Bracket
Counsel for the Town of Addison
Messer, Rockefeller, Fort, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2017-27966

Dear Ms. Bracket:

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# 686886.

The Addison Police Department (the "department"), which you represent, received a request for information related to a specified motor vehicle accident involving the requestor's client. You state the department has released some of the requested information. You state the department will redact insurance policy numbers relating to individuals other than the requestor's client in accordance with section 552.136(c) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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

¹Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

²Although you do not cite to section 552.130 of the Government Code in your brief to this office, we understand you to raise this section based upon your markings.

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). Upon review, we find the submitted video recordings contain motor vehicle record information. In this instance, you state the department does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the submitted video recordings in their entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). Further, we note some of the remaining information is subject to section 552.130. Because section 552.130 protects personal privacy, the requestor has a right of access to his client's motor vehicle record information pursuant to section 552.023 of the Government Code, and it may not be withheld from him under section 552.130. *See id.* § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the department must withhold the motor vehicle record information we have marked, which does not belong to the requestor's client, under section 552.130 of the Government Code. The remaining information is not confidential under section 552.130, and the department may not withhold it on that ground.

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. This section encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than 2,000,000. The department states the emergency communication district at issue is subject to section 772.118. The department asserts some of the remaining information in Exhibit 2 is confidential under section 772.118. Upon review, however, we find Exhibit 2 does not contain the telephone number of a 9-1-1 caller. Accordingly, the department has not established any of the remaining information in Exhibit 2 is confidential under chapter 772.118, and may not withhold any of it under section 552.101 of the Government Code on that ground.

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). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). 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.).

The requestor has a right of access to his client's private information, including his client's date of birth, pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Upon review, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. 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 conclude the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.


Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the department failed to demonstrate any of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

In summary, the department must withhold the submitted video recordings in their entireties under section 552.130 of the Government Code. The department must withhold (1) the information we marked under section 552.130 of the Government Code and (2) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/gw

Ref: ID# 686886

Enc. Submitted documents

c: Requestor
(w/o enclosures)