



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 22, 2017

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
1400 South Lamar, 6Floor, 6W
Dallas, Texas 75215

OR2017-29210

Dear Ms. McClellan:

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# 689376 (DPD Request No. D000375-100617).

The Dallas Police Department (the "department") received a request for all calls for service and police reports at a specified location during a specified time period. The department states it will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

Initially, we note this office has previously issued Open Records Letter No. 2017-09757 (2017), a previous determination authorizing the department to withhold the dates of birth

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Additionally, this office has previously issued Open Records Letter Nos. 2011-18466 (2011) and 2011-17075 (2011), previous determinations authorizing the department to withhold, under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, an originating address and telephone number, respectively, of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general decision. Accordingly, the department must withhold the dates of birth of public citizens in the submitted information in accordance with the previous determination issued in Open Records Letter No. 2017-09757. Further, provided the originating addresses and telephone numbers of 9-1-1 callers in the submitted information were furnished by a service supplier, the department must withhold the originating addresses and telephone numbers in accordance with the previous determinations issued in Open Records Letter Nos. 2011-18466 and 2011-17075.

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 section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. The juvenile must have been at least 10 years old and less than 17

years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We understand the department to assert the information it marked is subject to section 58.008(b).³ Upon review, we find the information at issue involves delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). However, we are unable to determine the age of the suspect listed in the information at issue. Accordingly, we must rule conditionally. If the suspect at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. However, if the suspect at issue was not ten years of age or older and under seventeen years of age at the time of the conduct, then the information does not involve juvenile conduct for purposes of section 58.008(b), and no portion of the information at issue may be withheld under section 552.101 on that basis.

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. The doctrine of common-law privacy protects a compilation of an individual’s criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We note active warrant information or other information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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

³Although the department raises section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. Act of May 28, 2017, 85th Leg., R.S., ch. 746 (S.B. 1304), § 21.

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). Upon review, we find portions of the information at issue satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of this information pertains to an individual who will be de-identified and whose privacy interest will, thus, be protected. Therefore, with the exception of the information we have marked for release, the department must withhold the information it marked and the additional 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 information we have marked for release is highly intimate or embarrassing and not of legitimate public concern. Thus, none of this 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 and the additional information we marked under section 552.130 of the Government Code.

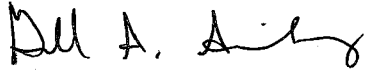
In summary, the department must withhold the dates of birth of public citizens and the originating addresses and telephone numbers of 9-1-1 callers furnished by a service supplier in the submitted information in accordance with the previous determinations issued in Open Records Letter Nos. 2017-09757, 2011-18466, and 2011-17075. If the suspect at issue was ten years of age or older and under seventeen years of age at the time of the conduct at issue, then the department must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. With the exception of the information we have marked for release, the department must withhold the information it marked and the additional 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 and the additional information we marked under section 552.130 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,

A handwritten signature in black ink, appearing to read "Gerald A. Arismendez". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 689376

Enc. Submitted documents

c: Requestor
(w/o enclosures)