



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2019

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

OR2019-04338

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# 750399 (COSA File No. W239973).

The City of San Antonio (the "city") received a request for a information pertaining to a specified accident and a named individual. You state the city has released some information. The city 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 information.

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 section 730.004 of the Transportation Code, which provides "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" means "information that identifies a person," and includes a person's photograph, social security number, driver identification number, name, and address, but does not include a zip code, telephone number, or medical and disability information. *Id.* § 730.003(6). DPS is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). The city states the submitted information contains personal information that its police department obtained from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to

government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). We note the requestor has a right of access to her own information pursuant to section 730.006 of the Transportation Code. *See id.* § 730.006 (personal information obtained by agency in connection with motor vehicle record shall be disclosed to requestor who demonstrates requestor has obtained written consent of the person who is subject of the information). Nevertheless, the city must withhold the remaining personal information, which we have marked, under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, the remaining information is not confidential under section 730.004 or 730.013, and the city may not withhold it under section 552.101 on either of those grounds.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication 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 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. *See* Health and Safety Code § 772.204. The city represents the emergency communication district here is subject to section 772.218. Therefore, the city must withhold the originating telephone number of a 9-1-1 caller it has marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if it was furnished by a 9-1-1 service provider.

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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). 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.). The requestor has a right of access to her private information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (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 individuals request information concerning themselves). The city asserts some of the remaining information, which pertains to another individual, is confidential under common-law privacy. However, because this individual has been de-identified pursuant to sections 730.004 and 730.013 of the Transportation Code, the privacy interest in the information at issue is sufficiently protected. Accordingly, none of the remaining information is confidential under common-law privacy, and the city may not withhold any of it under section 552.101 on that ground.

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. Because section 552.130 protects personal privacy, the requestor has a right of access to her own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the city must withhold the remaining motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of this chapter, 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."¹ Gov't Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Because section 552.136 protects personal privacy, the requestor has a right of access to her own insurance policy number pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. However, the city must withhold the remaining insurance policy number, which we have marked, under section 552.136 of the Government Code.

In summary, the city must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code; (2) the originating telephone number of a 9-1-1 caller it has marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if it was furnished by a 9-1-1 service provider; and (3) the information we have marked under sections 552.130 and 552.136 of the Government Code. The city 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.

¹The 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).

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 "Erin Groff". The signature is fluid and cursive, with a long horizontal stroke at the end.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/eb

Ref: ID# 750399

Enc. Submitted documents

c: Requestor
(w/o enclosures)