



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 27, 2019

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
315 South Santa Rosa, 6<sup>th</sup> Floor  
San Antonio, Texas 78207

OR2019-05465

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# 754499 (ORR# W243409).

The City of San Antonio (the "city") received a request for twenty specified police reports. The city states it is releasing some of the requested information. The city claims some of the submitted information is excepted from 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 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) (defining “delinquent conduct” 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 id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Case number SAPD18197668 involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Accordingly, the city must withhold case number SAPD18197668 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

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. Section 772.218 of the Health and Safety Code is applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). This section makes the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. The city states it is part of an emergency communication district established under section 772.218 of the Health and Safety Code. Upon review, we conclude the city must withhold the telephone number it marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if the number consists of the originating telephone number furnished by a 9-1-1 service supplier. If the marked information does not consist of the originating telephone number provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.218.

Section 552.101 of the Government Code also encompasses information protected by 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, address but not zip code, telephone number, or medical and disability information. *Id.* § 730.003(6). The Texas Department of Public Safety (“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 some of the submitted information consists of records that were obtained by the city 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). Accordingly, the city must withhold the driver identification numbers, names, and addresses but not zip codes of the individuals in the marked information the city received from DPS 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 the city marked is not confidential under section 730.004 or 730.013 of the Transportation Code and the city may not withhold that information under section 552.101 of the Government Code 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. 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). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the city has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 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 city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the city must withhold case number SAPD18197668 under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The city must withhold the telephone number it marked under section 552.101 of the Government

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<sup>1</sup>The 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).

Code in conjunction with section 772.218 of the Health and Safety Code if the number consists of the originating telephone number furnished by a 9-1-1 service supplier. The city must withhold the driver identification numbers, names, and addresses but not zip codes of the individuals in the marked information the city received from DPS under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information we marked under section 552.130 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.

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

Sincerely,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/jxd

Ref: ID# 754499

Enc. Submitted documents

c: Requestor  
(w/o enclosures)