



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 28, 2019

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

OR2019-05600

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# 752460 (COSA File No. W242035).

The City of San Antonio (the "city") received a request for a specified report as well as information pertaining to a specified address. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim 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 772.218 of the Health and Safety Code which applies to an emergency communication district for a county with a population of more than 1.5 million and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). You state the city is part of an emergency communication district that is subject to section 772.218 of the Health and Safety Code. You assert the submitted information includes the originating telephone number and address of a 9-1-1 caller. Accordingly, to the extent the telephone number and address you marked were provided by a service supplier, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

However, if the information at issue was not supplied by a 9-1-1 service supplier, then the city may not withhold this information under section 552.101 on the basis of section 772.218.

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 highly intimate or 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). The Third 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.). We note the requestor has a right of access to her date of birth 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). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated the remaining information you marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not 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.<sup>1</sup> *See* Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the telephone number and address you marked were provided by a service supplier, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The city must withhold the information we have marked under section 552.101 of the

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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, 480 (1987), 470 (1987).

Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.<sup>2</sup>

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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/gw

Ref: ID# 752460

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information being released contains a social security number. Section 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b). We also note the requestor has a right of access to certain information pertaining to herself pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. To the extent the city receives another request for this information from an individual without such a right of access, we note Open Records Letter No. 2016-08566 (2016) is a previous determination issued to the city authorizing it to withhold dates of birth of living individuals 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).