



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 1, 2019

Mr. Kevin Bailey  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2019-18113

Dear Mr. Bailey:

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# 772989 (City ID# M026347-041219).

The City of Midland (the "city") received three requests from two requestors for information pertaining to a specified motor vehicle incident. You state you have released some information. You indicate you will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You also indicate the city is withholding originating addresses and telephone numbers of 9-1-1 callers pursuant to Open Records Letter Nos. 2015-23311 (2015) and 2016-04310 (2016).<sup>2</sup> You further indicate the city is withholding public citizens' dates of birth pursuant to Open Records Letter No. 2015-26022

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<sup>1</sup>We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

<sup>2</sup>Open Records Letter Nos. 2015-23311 and 2016-04310 authorize the city to withhold the originating telephone numbers and addresses, respectively, of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision.

(2015).<sup>3</sup> You state you do not have information responsive to portions of the requests.<sup>4</sup> 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. Section 552.101 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. A compilation of an individual’s criminal history 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 that a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov’t Code § 411.082(2)(B)* (criminal history record information does not include driving record information). Further, 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). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from public disclosure under common-law privacy. *See Open Records Decision Nos. 600* (1992), 545 (1990). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455* (1987). Upon review, we find the information we have marked contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*.

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<sup>3</sup>Open Records Letter No. 2015-26022 authorizes the city to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

<sup>4</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *Open Records Decision Nos. 605 at 2* (1992), 452 at 3 (1986), 362 at 2 (1983).

Therefore, we conclude 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 failed to demonstrate any of the remaining information is highly intimate or embarrassing or not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [“EMS”] personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). The remaining information includes records made and maintained by EMS personnel. Upon review, we find section 773.091 is applicable to the information at issue. Thus, with the exception of the information subject to section 773.091(g), which is not confidential and must be released, the city must withhold the EMS records in Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information subject to section 773.091(g), which is not confidential and must be released, the city must withhold the EMS records in Exhibit C under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety 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,



Kimbell Kesling  
Attorney  
Open Records Division

KK/gw

Ref: ID# 772989

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)