



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2019

Ms. Chelsey Heil
Records Supervisor
Leander Police Department
705 Leander Drive
Leander, Texas 78641

OR2019-19690

Dear Ms. Heil:

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# 775843.

The Leander Police Department (the "department") received a request for information pertaining to a specified accident. The department states it has released some information to the requestor. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions the department 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. This section encompasses information protected by other statutes, such as chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than 3.3 million; section 772.218 applies to an emergency communication district for a county with a population of

more than 1.5 million; and section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

The department does not state the City of Leander is part of an emergency communication district established under chapter 772 or whether the telephone numbers and addresses at issue were furnished by a 9-1-1 service supplier. Thus, we rule conditionally. To the extent the telephone numbers and addresses in the information at issue were furnished by a 9-1-1 service supplier to an emergency communication district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the telephone numbers and addresses must be withheld from disclosure under section 552.101 of the Government Code. However, if the telephone numbers and addresses were not furnished by a 9-1-1 service supplier to an emergency communication district subject to section 772.118, 772.218, or 772.318, we find the department has failed to demonstrate the applicability of these sections to the information at issue. In that instance, the telephone numbers and addresses at issue may not be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 772.118, 772.218, or 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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. *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.).

Upon review, we find the department must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.108 of the Government Code provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body raising section 552.108 must explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department generally raises section 552.108 for the remaining information. A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.108(a)(1), (b)(1); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The

department does not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution, nor has the department explained release of the information would interfere with the detection, investigation, or prosecution of crime. Thus, the department has failed to demonstrate the applicability of section 552.108(a)(1) or section 552.108(b)(1). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2), (b)(2). The department has not demonstrated the information at issue pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, the department has failed to demonstrate the applicability of either section 552.108(a)(2) or section 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as the information does not relate to a threat against a police officer. *See id.* § 552.108(a)(3). Lastly, the department does not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the department may not withhold the information at issue under section 552.108 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure 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. The department asserts the video recordings at issue contain motor vehicle record information that is excepted from disclosure under section 552.130. Upon review, we find the video recordings at issue contain confidential motor vehicle record information. In this instance, the department states it does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the entireties of the video recordings at issue, which we have indicated, under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). The department must also withhold the additional motor vehicle record information we marked and indicated under section 552.130 of the Government Code. However, we find the department has failed to demonstrate any of the remaining information contains motor vehicle record information for the purposes of 552.130. Accordingly, the department may not withhold any of the remaining information under section 552.130 of the Government Code.

In summary, if the telephone numbers and addresses in the information at issue were furnished by a 9-1-1 service supplier to an emergency communication district that is subject to section 772.118, 772.218, or 772.318 of the Health and Safety Code, the department must withhold these telephone numbers and addresses under section 552.101 of the Government Code. The department must withhold the dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked and indicated 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,



Lecelle Clarke
Attorney
Open Records Division

LC/gw

Ref: ID# 775843

Enc. Submitted documents

c: Requestor
(w/o enclosures)