



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 22, 2019

Ms. Stephanie Berry  
Assistant City Attorney  
City of Denton  
215 East McKinney Street  
Denton, Texas 76201-4229

OR2019-23504

Dear Ms. Berry:

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# 784332 (Ref. No. C000682-061319).

The City of Denton (the "city") received a request for the report for a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . 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[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You raise section 552.108(a)(2) and state the submitted information relates to "a criminal investigation that did not result in a conviction or deferred adjudication." However, you also state the information "involves a pending criminal investigation[.]" Because you have provided this office with conflicting arguments, we find you have failed to demonstrate the applicability

of section 552.108(a)(2) to the information. Therefore, the city may not withhold the information on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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. Section 772.318 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 that are furnished by a 9-1-1 service supplier confidential. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You inform us the city is part of an emergency communication district that is subject to section 772.318. You state the telephone number you have marked was obtained from a 9-1-1 service supplier. Accordingly, the city must withhold the telephone number you have marked under section 552.101 in conjunction with section 772.318. However, we find no portion of the remaining information consists of an originating telephone number or address of a 9-1-1 caller furnished by a 9-1-1 service provider, and it may not be withheld under section 552.101 on that basis.

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. 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.). Thus, the city must withhold all public citizens’ dates of birth under section 552.101 in conjunction with common-law privacy.

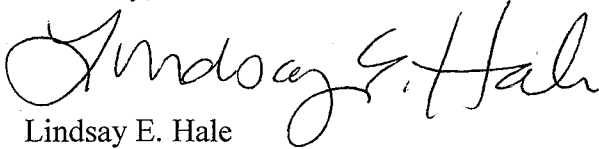
In summary, the city must withhold the telephone number you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay E. Hale". The signature is fluid and cursive, with the first name being the most prominent.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/gw

Ref: ID# 784332

Enc. Submitted documents

c: Requestor  
(w/o enclosures)