



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2019

Mr. Micah Fernandes  
Counsel for the City of Watauga  
Russell Rodriguez Hyde Bullock, L. L. P.  
1633 Williams Drive, Building 2, Suite 200  
Georgetown, Texas 78628

OR2019-35607

Dear Mr. Fernandes:

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# 801023 (City# PIA 19-984/RT 1975).

The Watauga Police Department (the "department"), which you represent, received a request for all records related to a named individual and a specified address. You state you will withhold dates of birth pursuant to a previous determination issued in Open Records Letter No. 2017-15230 (2017).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a

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<sup>1</sup> Open Records Letter No. 2017-15230 is a previous determination issued to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The present request requires the department to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, information that refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis. We note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation and may not be withheld on that basis.

Nevertheless, upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See Open Records Decision No. 649 (1996)*. These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

The department states the emergency communication district at issue is subject to section 772.318. Accordingly, if the telephone number the department marked consists of the originating telephone number of a 9-1-1 caller provided by a service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Conversely, if the telephone number is not the originating telephone number of a 9-1-1 caller supplied by a 9-1-1 service supplier, then the department may not withhold this information under section 552.101 on the basis of section 772.318.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the department must

withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, to the extent the department maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the telephone number the department marked consists of the originating telephone number of a 9-1-1 caller provided by a service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the motor vehicle record information you marked 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 <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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/jxd

Ref: ID# 801023

Enc. Submitted documents

c: Requestor  
(w/o enclosures)