



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 13, 2020

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2020-10782

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# 822128 (ORR# W303102-012820).

The San Antonio Police Department (the "department") received a request for a specified incident report. The department indicates it is withholding some of the requested information pursuant to Open Records Letter No. 2018-12961 (2018).<sup>1</sup> The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code also encompasses section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or

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<sup>1</sup> Open Records Letter No. 2018-12961 is a previous determination authorizing the department to withhold, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code, the originating telephone number of a 9-1-1 caller furnished by a service supplier established in accordance with chapter 772 of the Health and Safety Code without the necessity of requesting an attorney general's decision. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides, in pertinent part, as follows:

- (a) The following information is confidential and not subject to disclosure under [the Act]:
  - (1) a report of abuse, neglect, or exploitation made under this chapter;
  - (2) the identity of the person making the report; and
  - (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.
- (b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [the Texas Department of Family and Protective Services (the “DFPS”)] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a), (b). Section 48.051 of the Human Resources Code provides “a person having cause to believe that an elderly person, a person with a disability, or an individual receiving services from a provider as described by Subsection F [of chapter 48 of the Human Resources Code] is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the DFPS or another appropriate state agency. *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See id.* §§ 48.151, .152, .252, .301. Thus, reports the department creates generally are not subject to section 48.101. The department created the information at issue in connection with a criminal investigation it conducted. The department has not demonstrated the Adult Protective Services division of DFPS (“APS”) used or developed the information at issue in an APS investigation under chapter 48 of the Human Resources Code. *See id.* § 48.101(a)(3). Thus, the department has failed to demonstrate the information at issue pertains to an investigation conducted by an entity authorized to conduct such an investigation under chapter 48. Accordingly, the department may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.101 of the Government 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 intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *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. *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.). The department must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the department must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

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>2</sup> *See* Gov't Code § 552.130. The department must withhold driver's license numbers and issuing state under section 552.130 of the Government Code.

In summary, the department must withhold the submitted dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold driver's license numbers and issuing state 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

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/mo

Ref: ID# 822128

Enc. Submitted documents

c: Requestor  
(w/o enclosures)