



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 30, 2020

Mr. John W. Peeler
Coveler & Peeler, P.C.
Counsel for Montgomery County Emergency Services District 1
Two Memorial City Plaza
820 Gessner Road, Suite 1710
Houston, Texas 77024-8261

OR2020-12228

Dear Mr. Peeler:

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# 826235.

The Montgomery County Emergency Services District No. 1 (the "district"), which you represent, received a request for information pertaining to a specified accident.¹ You state the district has released some information to the requestor and redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130

¹ You state, and provide documentation demonstrating, the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² 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).

of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

The district asserts the submitted video recording contains motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, or 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 agree the submitted video recording contains motor vehicle record information. In this instance, you state the district does not possess the technological capability to redact information from video files. Thus, the district must withhold the submitted video recording in its entirety under section 552.130 of the Government Code.⁵ See Open Records Decision No. 364 (1983).

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. 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 some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy.⁶ However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern.

³ Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301 of the Government Code, we need not address whether the district violated section 552.301 in requesting a decision from this office. See *id.* §§ 552.301(b), (e), .302.

⁴ This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See *id.* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

⁵ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁶ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Therefore, the district may not withhold the remaining information at issue under section 552.101 on that basis.

In summary, the district must withhold the submitted video recording in its entirety under section 552.130 of the Government Code. The district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The district 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/gw

Ref: ID# 826235

Enc. Submitted documents

c: Requestor
(w/o enclosures)