



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2020

Ms. Stephanie N. Neal
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2020-16876

Dear Mr. Neal:

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# 835671 (ORR 2020-1457, 2020-1483).

The City of Mesquite (the "city") received two requests for information pertaining to a specified incident. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under section 552.101, 552.130, and 552.136 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. 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. To the extent the telephone numbers you have marked 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 must be withheld from disclosure under section 552.101 of the Government Code. However, if the telephone numbers at issue 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 you have failed to demonstrate the applicability of these sections to the information at issue. In that instance, the telephone numbers 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, 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). 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. 03-13-000546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find some of the remaining information, which you marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, the first requestor is the authorized representative of one of the individuals whose privacy interest is at issue and has a special right of access under section 552.023 of the Government Code to information pertaining to this individual that would otherwise be withheld to protect her privacy. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the city may not withhold the information you marked pertaining to this individual under section 552.101 in conjunction with common-law privacy from the first requestor. In this instance, the city must withhold the remaining marked information under section 552.101 in conjunction with common-law privacy from the first requestor. The city must withhold the entirety of the information you marked under section 552.101 in conjunction with common-law privacy from the second requestor.

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 county is excepted from public release. Gov't Code § 552.130. We note section 552.130 protects privacy interests. We note each requestor has a right of access to her client's motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Therefore, with the exception of the motor vehicle record information belonging to each requestor's client, the city must withhold the motor vehicle

record information you marked under section 552.130 of the Government Code from the respective requestors.

Section 552.136(b) of the Government Code provides, “[notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). We note section 552.136 protects personal privacy. As noted above, the first requestor is the authorized representative of the individual whose information at issue. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the city may not withhold the insurance policy number at issue from the first requestor. However, the city must withhold the insurance policy number in the remaining information under section 552.136 of the Government Code from the second requestor.

In summary, to the extent the telephone numbers you have marked 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 must be withheld from disclosure under section 552.101 of the Government Code. The city must withhold the information you marked under section 552.101 in conjunction with common-law privacy; however, the first requestor has a right of access to her client’s private information under section 552.023. With the exception of the motor vehicle record information belonging to each requestor’s client, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code from the respective requestors. The city must withhold the insurance policy number in the remaining information under section 552.136 of the Government Code from the second requestor. The remaining information must be released.

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,

Melanie Villars
Assistant Attorney General
Open Records Division

MJV/rm

Ref: ID# 835671

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)