



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2020

Mr. Kevin Bois
Kirby Police Department
4130 Ackerman Road
Kirby, Texas 78219

OR2020-25076

Dear Mr. Bois:

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#847891.

The Kirby Police Department (the "department") received a request for information pertaining to the requestor's specified arrest. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 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 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. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

The department asserts the information at issue contains the originating telephone number of a 9-1-1 caller. However, the department does not inform us whether it is part of an emergency communication district established under section 772.118, 772.218, or 772.318 of the Health and Safety Code. Nevertheless, if the department is part of an emergency communication district established under one of these sections, then, to the extent the telephone number of the 9-1-1 caller was supplied by a 9-1-1 service supplier, then the department must withhold this information 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. If the department is not subject to section 772.118, 772.218, or 772.318, or if the telephone number was not supplied by a 9-1-1 service supplier, then the department may not withhold the information on any of those grounds. We note, however, that you marked a 9-1-1 caller's name. We note only the originating addresses and telephone numbers of 9-1-1 callers are confidential under chapter 772 of the Health and Safety Code. Accordingly, the department may not withhold the caller's name under section 552.101 on this 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." Gov't Code § 552.101. Section 552.101 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 court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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.). We note the information at issue includes the date of birth. The requestor has a right of access to this information. *See* Gov't Code § 552.023 (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). Thus, the department must withhold the date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 a 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. We note the requestor has a right of access to his own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, if the department is part of an emergency communication district established under one of these sections, then, to the extent the telephone number of the 9-1-1 caller was supplied by a 9-1-1 service supplier, then the department must withhold this information 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. The department must withhold the

date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you marked under section 552.130 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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/jm

Ref: ID# 847891

Enc. Submitted documents

c: Requestor
(w/o enclosures)