



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 10, 2020

Ms. Julie P. Doshier  
Counsel for the City of Highland Village  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2020-28235

Dear Ms. Doshier:

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# 853879 (Your File Ref. #2020-255-117691).

The City of Highland Village (the "city"), which you represent, received a request for information related to a named individual at a particular address. You state the city has released some information. You state the city will withhold information pursuant to section 552.130(c) of the Government Code and dates of birth pursuant to a previous determination issued in Open Records Letter No. 2016-21546 (2016).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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

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<sup>1</sup> 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). Open Records Letter No. 2016-21546 is a previous determination issued to the city 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.

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 772.318 applies to an emergency communication district for a county with a population of more than 20,000. You inform us the city is part of an emergency communication district established under section 772.318. You state the information you marked was obtained from a 9-1-1 service supplier. As such, we find the city must withhold the information you marked under section 552.101 in conjunction with section 772.318.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. The city claims section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.182 provides in part:

- (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Gov’t Code § 418.182(a). The fact that information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The city argues some of the remaining information relates to a security system used to protect public or private property from an act of terrorism or related criminal activity. However, upon review, we find the city has failed to demonstrate the remaining information at issue consists of information that is confidential under section 418.182 of the Government Code. Accordingly, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 418.182 of the Government 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. 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 conclude the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information at issue is either not highly intimate or embarrassing or is of legitimate public interest. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining information to this requestor.<sup>2</sup>

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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/jxd

Ref: ID# 853879

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup> We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.