



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 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

OR2020-30985

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# 857532 (Your File Reference #2020-307-118218).

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 also 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).¹ You claim some of 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.

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

¹ 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.

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 772.318 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 and indicated was obtained from a 9-1-1 service supplier. As such, we find the city must withhold the information you marked and indicated under section 552.101 in conjunction with section 772.318.

Section 552.101 of the Government Code excepts “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 submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the information you marked pertains to a criminal investigation that did not result in conviction or deferred adjudication. Based on this representation, we agree section 552.108(a)(2) is applicable to the information you marked.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic

information includes the offense committed, names of investigating officers, and a sufficient portion of the narrative to include a detailed description of the offense. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, which must be released, the city may withhold the information you marked under section 552.108(a)(2) of the Government Code.

In summary, the city must withhold the information you marked and indicated 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 and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the city may withhold the information you marked under section 552.108(a)(2) of the Government Code. The city 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/gw

Ref: ID# 857532

Enc. Submitted documents

c: Requestor
(w/o enclosures)