



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2022

Ms. Samantha Lee
Assistant City Secretary
City of Converse
406 South Seguin
Converse, Texas 78109

OR2022-19854

Dear Ms. Lee:

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# 958135.

The Converse Police Department (the "department") received a request for seven specified incident reports. The department states it is releasing some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

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 information protected by section 773.091 of the Health and Safety Code, which provides in part:

- (a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). The department contends the submitted information consists of records made and maintained by EMS personnel. Upon review, we find the information at issue does not consist of communications between certified emergency medical services personnel providing medical supervision and patients that were made in the course of providing emergency medical services to the patients. *See id.* § 773.091(a). Furthermore, the information at issue does not consist of records of the identity, evaluation, or treatment of patients by emergency medical services personnel providing medical supervision that were created by the emergency medical services personnel or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, we find section 773.091 does not apply to any portion of the information, and the department may not withhold the information under section 552.101 of the Government Code on that basis.

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. 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. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find some of the submitted information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the requestor’s date of birth, to which the requestor has a right of access pursuant to section 552.023 of the Government Code, the department must also withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

Ref: ID# 958135

Enc. Submitted documents

c: Requestor
(w/o enclosures)