



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 18, 2022

Ms. Stacie S. White
Counsel for the City of Bedford
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-20733

Dear Ms. White:

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# 960091.

The City of Bedford (the "city"), which you represent, received a request for information pertaining to a specified address and the requestor. You state the city will redact social security numbers pursuant to section 552.147(b) of the Government Code and certain information pursuant to Open Records Decision No. 684 (2009).¹ You also state the city will release some of the requested information. 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 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state case

¹ Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

number 2019-00022019 pertains to an active criminal investigation or prosecution. Based on this representation, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to case number 2019-00022019.

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. *See 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) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state case number 2018-00007163 relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to case number 2018-00007163.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127 at 3-4. Accordingly, with the exception of basic information, the city may withhold case number 2019-00022019 under section 552.108(a)(1) of the Government Code and case number 2018-00007163 under section 552.108(a)(2) of the Government Code.²

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 of the Government Code encompasses chapter 772 of the Health and Safety Code, which 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 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. We understand the city is located in an emergency communication district established under section 772.218 of the Health and Safety Code. Accordingly, the city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if they consist of the originating telephone numbers supplied by a 9-1-1

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

service supplier. However, if the information at issue was not supplied by a 9-1-1 service supplier, then the city may not withhold the information at issue under section 552.101 in conjunction with section 772.218 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. 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. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. ORD 393 at 2; see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

We note some of the information at issue pertains to a report of alleged sexual assault. The requestor in this case knows the identity of the alleged victim. We believe in this instance, withholding only identifying information from the requestor would not preserve the victim's common-law right to privacy. Therefore, the city must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Further, upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor has a right of access to his own confidential information pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is 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, with the exception of the date of birth of the requestor, the city must withhold all public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining information at issue is highly intimate or

embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.³ 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 country is excepted from public release. *See Gov't Code § 552.130.* We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his own motor vehicle record information. *See id.* § 552.023(a); ORD 481 at 4. In this instance, the requestor may have a right of access to some of the motor vehicle record information at issue under section 552.023 of the Government Code. However, because we are unable to determine whether the information at issue belongs to the requestor, we must rule conditionally. To the extent the motor vehicle record information at issue belongs to the requestor, he has a right of access under section 552.023 to this information, and the city may not withhold such information under section 552.130 from the requestor. To the extent the motor vehicle record information at issue does not belong to the requestor, the city must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, the city may withhold case number 2019-00022019 under section 552.108(a)(1) of the Government Code and case number 2018-00007163 under section 552.108(a)(2) of the Government Code. The city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code if they consist of the originating telephone numbers supplied by a 9-1-1 service supplier. With the exception of the date of birth of the requestor, the city must withhold all public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the motor vehicle record information at issue does not belong to the requestor, the city must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The city must release the remaining information.⁴

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.

³ 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).

⁴ We note the requestor has a right of access to some of the information being released. *See Gov't Code § 552.023(a); ORD 481 at 4.* Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 960091

Enc. Submitted documents

c: Requestor
(w/o enclosures)