



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2022

Mr. James Santangelo
Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2022-26798

Dear Mr. Santangelo:

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# 970279 (City ID# MCAG 22-51).

The Missouri City Police Department (the "department") received a request for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 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. Section 552.101 encompasses information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of Missouri City is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. Accordingly, the department must withhold the address and telephone number you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if it consists of the originating address and telephone number furnished by a 9-1-1 service supplier. However, if the marked information does not consist of the originating address and telephone number provided by a 9-1-1 services supplier, it may not be withheld under section 552.101 in conjunction with section 772.318.

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. 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 information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold all dates of birth, including audible dates of birth, 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 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. Accordingly, the department must withhold the information you marked, we marked, and all audible and visible license plate images, license plate numbers, and driver's license numbers in the submitted video recordings under section 552.130 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ *Id.* § 552.1175. Section 552.1175 applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *See id.* § 552.1175(a)(1); *see also id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). Thus, to the extent the information at issue relates to an individual who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we indicated under section 552.1175 of the Government Code. Conversely, if the individual whose information at issue does not elect to restrict access to his information in accordance with section 552.1175(b), the department may not withhold this information under section 552.1175 of the Government Code.

In summary, the department must withhold the address and telephone number you marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if it consists of the originating address and telephone number furnished by a 9-1-1 service supplier. The department must withhold all dates of birth, including audible dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470.*

marked, we marked, and all audible and visible license plate images, license plate numbers, and driver's license numbers in the submitted video recordings under section 552.130 of the Government Code. To the extent the information at issue relates to an individual who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we indicated under section 552.1175 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 970279

Enc. Submitted documents

c: Requestor
(w/o enclosures)