



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2022

Ms. Chelsey Heil #1191
Records Supervisor
City of Leander
705 Leander Drive
Leander, Texas 78641

OR2022-27373

Dear Ms. Heil:

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# 970625.

The Leander Police Department (the "department") received a request for information pertaining to a specified incident involving the requestor's client. You state the department has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than 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.* §§ 552.108(a)(2), .301(e)(1)(A). You have not explained the information at issue pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, you have failed to demonstrate the applicability of section 552.108(a)(2). Therefore, the department may not withhold any portion of the submitted information under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code 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 772.118 applies to an emergency communication district for a county with a population of more than 3.3 million. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

The department asserts the information at issue contains an originating telephone number of a 9-1-1 caller. However, the department does not inform us whether it is part of an emergency communication district established under sections 772.118, 772.218, or 772.318 of the Health and Safety Code. Nevertheless, if the department is part of an emergency communication district established under one of these sections, then, to the extent the telephone number of the 9-1-1 caller was supplied by a 9-1-1 service supplier, then the department must withhold this information under section 552.101 of the Government Code in conjunction with sections 772.118, 772.218, or 772.318 of the Health and Safety Code. If the department is not subject to sections 772.118, 772.218, or 772.318, or if the telephone number was not supplied by a 9-1-1 service supplier, then the department may not withhold the information on any of those grounds.

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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The 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.). We note the requestor has a right of access to information pertaining to her client that would

otherwise be confidential under common-law privacy. *See* Gov't Code § 552.023(a) (“a person or person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to a 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 herself). Thus, the department may not withhold information pertaining to the requestor’s client under section 552.101 on the basis of common-law privacy. Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the remaining information under section 552.101 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. Gov’t Code § 552.130. We note, however, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to his client’s motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the department must withhold the visible driver’s license and the visible license plates not belonging to the requestor’s client in addition to the information we marked under section 552.130 of the Government Code.

In summary, if the department is part of an emergency communication district established under one of these sections, then, to the extent the telephone number of the 9-1-1 caller was supplied by a 9-1-1 service supplier, then the department must withhold this information under section 552.101 of the Government Code in conjunction with sections 772.118, 772.218, or 772.318 of the Health and Safety Code. The department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the visible driver’s license and the visible license plates not belonging to the requestor’s client in addition to the information we marked under section 552.130 of the Government Code. The department must release the remaining information.¹

¹ 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 department receives another request for the same information from a different requestor, the department must again seek a decision from this office.

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,

Sarah E. Reese
Attorney
Open Records Division

SER/jxd

Ref: ID# 970625

Enc. Submitted documents

c: Requestor
(w/o enclosures)