



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2022

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
1400 Botham Jean Boulevard
Dallas, Texas 75215

OR2022-31082

Dear Ms. Armstrong:

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# 977581 (Ref. No. D018729-062322).

The Dallas Police Department (the “department”) received a request for information pertaining to two named individuals or five specified addresses. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, and 552.136 of the Government Code.¹ Additionally, you state the department notified an individual of the right to submit comments to this office why some of the submitted information should not be released.² *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹ We note, and you acknowledge, the department failed to comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov’t Code § 552.301(b), (e). Nonetheless, because sections 552.101, 552.1175, 552.130, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these exceptions to the submitted information. *See id.* §§ 552.007, .302, .352. Further, although you raise section 552.117 of the Government Code for portions of the information at issue, we note section 552.1175 of the Government Code is the proper exception to raise for information not held in an employment capacity. *See id.* §§ 552.117, .1175.

² As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

³ We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 department is part of an emergency communication district established under section 772.218 of the Health and Safety Code. Accordingly, the department must withhold the telephone numbers and addresses 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 and addresses supplied by a 9-1-1 service supplier. However, if the information at issue was not supplied by a 9-1-1 service supplier, then the department may not withhold the information at issue under section 552.101 in conjunction with section 772.218 of the Health and Safety Code.

Section 552.1175 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. Gov’t Code § 552.1175. Section 552.1175, applies, in part, to “a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]” *Id.* § 552.1175(a)(5); *cf. id.* § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Accordingly, to the extent the information we have marked pertains to an individual who is subject to section 552.1175(a) of the Government Code and who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have marked under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual is not subject to section 552.1175(a) of the Government Code or does not elect to restrict access to their information in accordance with section 552.1175(b), then the department may not withhold the information at issue under section 552.1175 of the

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Government Code. In either instance, we find you have failed to demonstrate any of the remaining information at issue is subject to section 552.1175, and the department may not withhold any of the remaining information on that basis.

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 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. 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). 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.). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of the dates of birth at issue belong to individuals who may be de-identified under section 552.1175 of the Government Code. In that instance, the de-identified individuals' privacy interests are, thus, protected. Accordingly, the department must withhold all identifiable public citizens' dates of birth and the information you have marked 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 motor vehicle record information we have marked under section 552.130 of the Government Code. However, the remaining information does not consist of motor vehicle record information subject to section 552.130 of the Government Code. Therefore, the department may not withhold any portion of the remaining information under section 552.130.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). You state the employee identification numbers you have marked are used in conjunction with one additional digit to access city

credit union bank accounts. We therefore conclude the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the telephone numbers and addresses 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 and addresses supplied by a 9-1-1 service supplier. To the extent the information we have marked pertains to an individual who is subject to section 552.1175(a) of the Government Code and who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the department must withhold the information we have marked under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The department must withhold all identifiable public citizens' dates of birth and the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must withhold the employee identification numbers you have marked under section 552.136 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 977581

Enc. Submitted documents

c: Requestor
(w/o enclosures)