



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 9, 2022

Ms. Mary E. Miller  
Assistant District Attorney  
Denton County  
127 North Woodrow Lane, Suite 300  
Denton, Texas 76205

OR2022-38214

Dear Ms. Miller:

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# 988805 (Request No. PD-2022-864).

The Denton County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim some of the submitted information is exempted 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 exempts 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 protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at (1990), 515 at 4-5. The privilege exempts the

informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

The sheriff's office states the information at issue contains the identifying information of a complainant who reported possible criminal activities to the sheriff's office. Upon review, we conclude the sheriff's office has demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Therefore, the sheriff's office may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.<sup>1</sup> However, we you have failed to demonstrate the remaining information identifies an individual who reported a violation of law to the sheriff's office for purposes of the informer's privilege. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 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. 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*. However, we note one of the dates of birth at issue pertains to an individual who has been de-identified and whose privacy interests are, thus, protected. Accordingly, the sheriff's office must withhold all identifiable public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses 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 sheriff's office is part of an emergency communication district that is subject

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

to section 772.318 of the Health and Safety Code. Upon review, you have failed to demonstrate the remaining information is protected by section 772.318 of the Health and Safety Code. Thus, the sheriff's office may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.130 of the Government Code excepts from public disclosure 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. *See Gov't Code § 552.130.* Therefore, the sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, the sheriff's office may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The sheriff's office must withhold all identifiable public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The sheriff's office 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/pt

Ref: ID# 988805

Enc. Submitted documents

c: Requestor  
(w/o enclosures)