



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2016

Mr. Stephen D. Gates
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2016-01590

Dear Mr. Gates:

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# 594977 (Midland ORR# 18067).

The Midland Police Department (the "department") received a request for a specified incident report. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the department seeks to withhold the telephone number of a 9-1-1 caller and the date of birth of a public citizen. We note this office recently issued Open Records Letter No. 2015-23311 (2015), a previous determination authorizing the department to withhold the originating telephone number of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. Additionally, in Open Records Letter No. 2015-26022 (2015), this office issued a previous determination to the department authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Accordingly,

the department must withhold (1) the originating telephone number of a 9-1-1 caller in the submitted information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code in accordance with the previous determination issued in Open Records Letter No. 2015-23311; and (2) the date of birth of a public citizen in the submitted information in accordance with the previous determination issued in Open Records Letter No. 2015-26022.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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). Upon review, we agree the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold (1) the originating telephone number of a 9-1-1 caller in the submitted information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code in accordance with the previous determination issued in Open Records Letter No. 2015-23311; and (2) the date of birth of a public citizen in the submitted information in accordance with the previous determination issued in Open Records Letter No. 2015-26022. The department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must release the remaining submitted 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 http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive style with a horizontal line at the end.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 594977

Enc. Submitted documents

c: Requestor
(w/o enclosures)