



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2016

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2016-04310

Dear Mr. Toulet:

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# 599524 (City ID# 18294).

The Midland Police Department (the "department") received a request for all police records pertaining to three specified addresses and three named individuals. You state you do not have some information.¹ We understand you will redact motor vehicle record information pursuant to section 552.130 of the Government Code and the originating telephone numbers of 9-1-1 callers pursuant to Open Records Letter No. 2015-23311 (2015).² You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e). Open Records Letter No. 2015-23311 is a previous determination issued to the City of Midland authorizing it to withhold the originating telephone numbers of 9-1-1 callers furnished to it 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, without requesting a decision from this office. See Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) 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.” Gov’t Code § 552.101. Section 552.101 of the Government Code 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 doctrine of common-law privacy protects a compilation of an individual’s criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted individual has significant privacy interest in compilation of one’s criminal history). Furthermore, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person does not implicate the privacy interest of the individual and may not be withheld under section 552.101 on that basis.

You contend Exhibit B is protected under common-law privacy and assert the present request requires the department to compile unspecified law enforcement records concerning the named individuals, thus implicating the named individuals’ right to privacy. However, Exhibit B does not list any of the named individuals as a suspect, arrestee, or criminal defendant. Thus, Exhibit B is not part of a criminal history compilation and, thus, does not implicate the individuals’ right to privacy. Accordingly, the department may not withhold this information as a criminal history compilation under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note the department seeks to withhold the dates of birth of living individuals. 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 living individuals under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Gov’t Code § 552.301(a); ORD 673. Therefore, the department must withhold the dates of birth of all living individuals in accordance with the previous determination issued in Open Records Letter No. 2015-26022.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 58.007 of the Family Code. The relevant language of section 58.007 reads:

- (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You state Exhibit C is subject to section 58.007(c). However, upon our review, we find Exhibit C does not identify a suspect or offender who is ten years of age or older and under seventeen years of age. As such, section 58.007 is not applicable and the department may not withhold Exhibit C under section 552.101 on this basis.

Section 552.101 of the Government Code also 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)*. You state the City of Midland is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. You assert Exhibit E contains the originating addresses of 9-1-1 callers furnished by a 9-1-1 service supplier. Based upon your representations and upon our review, we find the department must withhold the originating addresses of 9-1-1 callers furnished by a 9-1-1 service supplier in Exhibit E under section 552.101 in conjunction with section 772.318.

As stated above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects the specific types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation* and is subject to the two-part test discussed above. *See Indus. Found.*, 540 S.W.2d at 685. 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 find the information you have marked in Exhibit F, and the additional information we have marked,

satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information you have marked in Exhibit F, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the dates of birth of all living individuals in accordance with the previous determination issued in Open Records Letter No. 2015-26022. The department must withhold the originating addresses of 9-1-1 callers furnished by a 9-1-1 service supplier in Exhibit E under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. The department must withhold the information you have marked in Exhibit F, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

Finally, you ask this office to issue a previous determination permitting the department to withhold addresses of 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673. After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the department must withhold under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code the originating address 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. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 599524

Enc. Submitted documents

c: Requestor
(w/o enclosures)