



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 29, 2016

Ms. Marie N. Rovira  
Counsel for the Town of Addison  
Messer Rockefeller Fort  
6351 Preston Road, Suite 350  
Frisco, Texas 75034

OR2016-06913

Dear Ms. Rovira:

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# 610478.

The Addison Police Department (the "department") received a request for all information pertaining to two specified units at a specified address during a defined time frame. You state the department will release some information. We understand the department will withhold the information you have marked pursuant to section 552.147(b) of the Government Code. You claim portions of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 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 encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.118 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 3.3 million and makes confidential the originating telephone numbers and addresses of 9-1-1 callers provided by a service supplier. *See* Health & Safety Code §§ 772.104, .118; *see also* Open Records Decision No. 649 at 2 (1996). You argue the information you have marked should be withheld under section 772.118. The Town of Addison (the "town") is in Dallas County, which we understand has a population over 3.3

---

<sup>1</sup>Although you do not raise section 552.130 in your brief, we understand you to raise this section based on your markings in the submitted information.

million, and you inform us the town is part of an emergency communication district established under section 772.118. We understand that the information at issue was furnished by a 911 service supplier. We note, however, that in addition to the originating telephone number and address of a 911 caller, you have also marked a cellular telephone number that does not consist of an originating telephone number or address of a 9-1-1 caller furnished by a service supplier so as to be subject to chapter 772. This number, which we have marked for release, is not confidential under chapter 772 of the Health and Safety Code and may not be withheld on that basis. Therefore, except for the information we have marked for release, the department must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *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.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>2</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. We note the requestor has a special right of access to her own information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are 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 himself). Thus, the department may not withhold the requestor's from her under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, with the exception of the requestor's

---

<sup>2</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

date of birth, the department must withhold all public citizens' dates of birth 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 a 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. However, we note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Further, some of the remaining information you have marked is not subject to section 552.130, and the department may not withhold it on that basis. Accordingly, except for the information we marked for release, the department must withhold the information you have marked and we have marked under section 552.130 of the Government Code.

In summary, except for the information we have marked for release, the department must withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. With the exception of the requestor's date of birth, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information we marked for release, the department must withhold the information you have marked and we have marked under section 552.130 of the Government Code. The remaining information must be released.

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](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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 610478

Enc. Submitted documents

c: Requestor  
(w/o enclosures)