



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 4, 2016

Ms. Sylvia McClellan  
Assistant City Attorney  
City of Dallas  
1400 South Lamar Street  
Dallas, Texas 75215

OR2016-07538

Dear McClellan:

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# 604132 (Dallas Reference No. 2015-19317).

The Dallas Police Department (the "department") received a request for information pertaining to two specified investigations involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the named individual or the specified investigations. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

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<sup>1</sup>Although you do not raise section 552.117 of the Government Code in your brief, we understand you to claim this exception based on your markings in the submitted information.

<sup>2</sup>We assume that 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 letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F or subchapter E-1 of chapter 411 the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note records relating to routine traffic violations are not considered criminal history information. *See id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find none of the responsive information constitutes confidential CHRI; thus, the department may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

We note the department seeks to withhold the telephone number of a 9-1-1 caller. In Open Records Letter No. 2011-17075 (2011), this office issued a previous determination to the department authorizing it 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 without requesting a decision from this office. *See id.* § 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). Provided the originating telephone number of the 9-1-1 caller at issue was furnished by a service supplier established in accordance with chapter 772, the department must withhold the telephone number you have marked in accordance with the previous determination issued in Open Records Letter No. 2011-17075.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12. Accordingly, if the individual at issue is currently a licensed peace officer as defined by article 2.12, with the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked and indicated, under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual at issue is not currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, this information may not be withheld under section 552.117(a)(2) of the Government Code. However, none of the information we have marked for release is subject to section 552.117(a)(2), and it may not be withheld on that basis.

If the individual at issue is not currently a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). As previously noted, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual at issue timely requested confidentiality under section 552.024 of the Government Code, with the exception of the information we marked for release, the department must withhold the information you have marked, and the additional information we have marked and indicated, under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone

service.<sup>4</sup> Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the department may not withhold this information under section 552.117(a)(1) of the Government Code. However, none of the information we have marked for release is subject to section 552.117(a)(1), and it may not be withheld 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. 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. *Id.* 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>5</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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). In Open Records Decision No. 393 (1983), this office concluded generally, only information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. ORD 393 at 2; see Open Records Decision No. 339 (1982); see also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). Upon review, we find some of the information you have marked, and additional information we have marked and indicated, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some of the information at issue, which we have marked for release, relates to an individual whose identity has been withheld and whose

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>5</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).

privacy interests are thus protected. The department may not withhold otherwise private information relating to the individual who has been de-identified. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the department has failed to demonstrate the remaining information at issue, which we have marked for release, is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the department must withhold the information you have marked under section 552.102(a) of the Government Code.

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(a). Upon review, except for the information we have marked for release, we find the department must withhold most of the information you have marked and we have marked under section 552.130. The information we have marked for release does not constitute motor vehicle record information and may not be withheld under section 552.130 of the Government Code.

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”). We understand 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 in the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail

address is of a type specifically excluded by subsection (c).<sup>6</sup> *See id.* § 552.137(a)-(c). We note the requestor has a right of access to her own e-mail address under section 552.137(b). *See id.* § 552.137(b). The e-mail address at issue is not of a type excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have indicated under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, provided the originating telephone number of the 9-1-1 caller at issue was furnished by a service supplier established in accordance with chapter 772, the department must withhold the telephone number you have marked in accordance with the previous determination issued in Open Records Letter No. 2011-17075. If the individual at issue is currently a licensed peace officer as defined by article 2.12, with the exception of the information we marked for release, the department must withhold the information you have marked, and the additional information we have marked and indicated, under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. If the individual at issue is not a currently licensed peace officer, then, to the extent the individual at issue timely requested confidentiality under section 552.024 of the Government Code, with the exception of the information we marked for release, the department must withhold the information you have marked, and the additional information we have marked and indicated, under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. With the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information you have marked under section 552.102(a) of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The department must withhold the information you have marked under section 552.136 of the Government Code. The department must withhold the personal e-mail address we have indicated under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The department must release the remaining responsive 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.

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<sup>6</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', with a long horizontal flourish extending to the right.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/bw

Ref: ID# 604132

Enc. Submitted documents

c: Requestor  
(w/o enclosures)