



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 7, 2016

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

OR2016-20211

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# 631182 (ORR# W004308).

The Addison Police Department (the "department"), which you represent, received a request for report number 15-3414. You indicate the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> You state the department has released some of the requested information. You claim 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.

Section 552.101 of the Government Code excepts from public 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

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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).

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 million, and you inform us the town is part of an emergency communication district established under section 772.118. We note you have marked an address that is the location of the incident at issue. This information, which we have marked for release, is not the originating address of a 9-1-1 caller and therefore may not be withheld under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code. However, the department must withhold the telephone number and the address of the 9-1-1 caller, which you have marked, under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code, if they were furnished by a 9-1-1 service supplier. If the telephone number and the originating address of the 9-1-1 caller were not provided by a 9-1-1 service supplier, they may not be withheld under section 552.101 in conjunction with section 772.118.

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).

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. Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold

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<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).

the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the public citizen's date of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the information we marked for release, the department must withhold the telephone number and the address you marked under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code, if they consist of the originating telephone number and address of a 9-1-1 caller furnished by a 9-1-1 service supplier. The department must withhold the information we marked and the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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 [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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 631182

Enc. Submitted documents

c: Requestor  
(w/o enclosures)