



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2015

Ms. Marie Rovira
Counsel for Town of Addison
Messer, Rockefeller & Fort, P.L.L.C.
6351 Preston Road, Suite 350
Fresco, Texas 75034

OR2015-13123

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# 569428.

The Addison Police Department (the "department"), which you represent, received three requests for information pertaining to a specified incident. You state the department has released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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. This section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* §411.083.

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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Additionally, because the laws that govern the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. Upon review, we find the information we marked consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also 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 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. Therefore, we conclude the department must withhold the telephone numbers and address we 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 marked information was not provided by a 9-1-1 service supplier, it may not be withheld under section 552.101 in conjunction with section 772.118. However, we find the department has failed to demonstrate any of the remaining information at issue consists 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. Therefore, none of the remaining information at issue is confidential under chapter 772 of the Health and Safety Code, and the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

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.¹ *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 established. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, we note the right to privacy is a personal right that “terminates upon the death of the person whose privacy is invaded.” *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977)); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Although you argue the information at issue must be withheld on the basis of common-law privacy, upon review, we find the person whose privacy interests are at issue is deceased. Therefore, none of the information at issue may be withheld under section 552.101 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 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. We note the purpose of section 552.130 is to protect the privacy interests of individuals. As noted above, the right of privacy lapses at death. See *Moore*, 589 S.W.2d at 491; see also Attorney General Opinions JM-229; H-917; ORD 272. Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. Upon review, we the information we marked consists of motor vehicle record information. Thus, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. Further, the submitted video recordings contain motor vehicle record information. You state the department lacks the technological capability to redact the confidential information in the video recordings. Accordingly, the department must withhold the submitted video recordings in their entireties under section 552.130 of the Government Code. See Open Records Decision No. 364 (1983). However, we find the submitted audio recordings do not contain information that is subject to section 552.130. Further, we find the remaining information you marked pertains only to an individual who is deceased. Accordingly, the department may not withhold any of the remaining information you marked or any portions of the submitted audio recordings under section 552.130 of the Government Code.

¹Although you do not raise common-law privacy in your brief, we understand you to claim this doctrine based on your markings in the submitted information.

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).² *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.³

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. Gov’t Code § 552.147(a). We note the purpose of section 552.147 is to protect the privacy interests of individuals. As noted above, the right of privacy lapses at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272. Therefore, a social security number that pertains solely to a deceased individual may not be withheld under section 552.147. Accordingly, the department may not withhold the social security number you marked under section 552.147 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the telephone numbers and address we 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. The department must withhold the motor vehicle record information we marked and the submitted video recordings under section 552.130 of the Government Code. The department must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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.

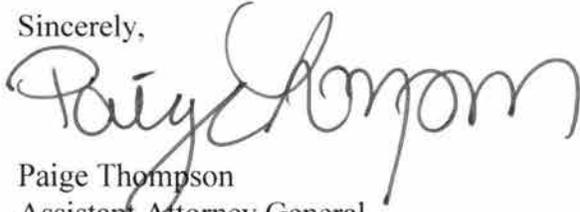
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

[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 "Paige Thompson". The signature is written in a cursive style with a large, looping "P" and "T".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 569428

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)