



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2015

Mr. Zachary Noblitt
Assistant City Attorney
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2015-16450

Dear Mr. Noblitt:

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# 574705.

The City of Dallas (the "city") received a request for information related to two specified incidents at a specified address, to include incident reports and associated audio and video recordings. You state you do not have information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you seek to withhold the telephone number and an address of a 9-1-1 caller. In Open Records Letter Nos. 2011-17075 (2011) and 2011-18466 (2011), this office issued previous determinations to the city's police department (the "department") authorizing it to withhold the originating telephone number and address, respectively, of a 9-1-1 caller furnished to the department by a service supplier established in accordance with chapter 772

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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* Gov't Code § 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 and address of the 9-1-1 caller at issue were furnished by a service supplier established in accordance with chapter 772, the city must withhold the telephone number and address you have marked in accordance with the previous determinations issued in Open Records Letter Nos. 2011-17075 and 2011-18466.

Section 552.101 of the Government Code excepts "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 information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). You have not demonstrated how any portion of the submitted information consists of records made and maintained by emergency medical services personnel. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 773.091(b) 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 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). Upon review, we find some of the information in the submitted audio recording satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold this information, which we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

You state you will withhold the information you have marked under section 552.130 of the Government Code.² We note some of the remaining information contains additional motor vehicle record information subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136(b) 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"). You state the employee identification numbers you have marked are used in conjunction with one additional digit to access credit union bank accounts. Thus, the city must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, provided the originating telephone number and address of the 9-1-1 caller at issue were furnished by a service supplier established in accordance with chapter 772, the city must withhold the telephone number and address you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code in accordance with the previous determinations issued in Open Records Letter Nos. 2011-17075 and 2011-18466. The city must withhold the information we have

²Section 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).

indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The city must withhold the information you have marked under section 552.136 of the Government Code. The city 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, 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 'JB', with a long horizontal flourish extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 574705

Enc. Submitted documents

c: Requestor
(w/o enclosures)