



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 1, 2015

Ms. Tiffany N. Nicole
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-18249

Dear Ms. Nicole:

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# 578036 (ORR# 22426).

The Houston Emergency Center (the "HEC") received a request for 9-1-1 calls regarding several specified incidents at specified locations.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

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 encompasses the doctrine of common-law privacy, which protects

¹You state the HEC sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note, and you acknowledge, the HEC did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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 submitted information generally satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the HEC must withhold the information we have noted under section 552.101 of the Government Code in conjunction with common-law privacy. However, some of the remaining information at issue relates to individuals who are not identified and whose privacy interests, thus, are not implicated. Further, 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 HEC may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Some of the remaining information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

³The 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).

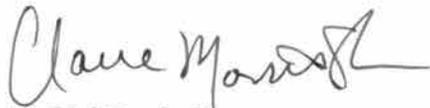
Gov't Code § 552.1175(a)(1), (b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Some of the remaining information relates to an individual who was licensed as a peace officer at the time the information at issue was created, and the information at issue is not held in the employment context. Accordingly, if the information at issue, which we have noted, relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), the HEC must withhold the information we noted under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual whose information is at issue does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

In summary, the HEC must withhold the information we noted under section 552.101 of the Government Code in conjunction with common-law privacy. If the information we noted relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the HEC must withhold the information at issue under section 552.1175 of the Government Code; however, the cellular telephone number at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The HEC 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 578036

Enc. Submitted documents

c: Requestor
(w/o enclosures)