



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 20, 2015

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

OR2015-24409

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# 588084.

The Town of Addison (the "town"), which you represent, received a request for specified information pertaining to a specified address during a specified time period.<sup>1</sup> You state you

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<sup>1</sup>You state the town sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

do not have information responsive to portions the request.<sup>2</sup> You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup>

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 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 and indicated should be withheld under section 772.118. 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 town must withhold the telephone numbers and addresses you have marked and indicated 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 and indicated 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 town has failed to demonstrate any of the remaining information 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 is confidential under chapter 772 of the Health and Safety Code, and the town may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

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<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>Although you do not raise section 552.130 of the Government Code in your brief, we understand the town to assert this exception based on your markings.

<sup>4</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 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. 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). Further, where the requestor knows the identity of the victim, the entire report must be withheld to protect the victim's privacy.

Additionally, we note that, 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. *Indus. Found.*, 540 S.W. 2d 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

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<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).

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.

We note some of the submitted information involves a report of alleged sexual assault. In this instance, you seek to withhold the entirety of the alleged sexual assault report under section 552.101 in conjunction with common-law privacy. However, the town has not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the sexual assault report must be withheld on the basis of common-law privacy. Accordingly, the town may not withhold the entirety of the sexual assault report under section 552.101 of the Government Code on that basis. However, we find the remaining information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the town must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. We find the remaining information either pertains to an individual who has been de-identified and whose privacy interests are, thus, protected, or is not highly intimate or embarrassing and not of legitimate public concern. Thus, the town may not withhold any of the remaining information 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. Accordingly, the town must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked and indicated, under section 552.130 of the Government Code.

In summary, the town must withhold the telephone numbers and addresses you have marked and indicated 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 town must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The town must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked and indicated, under section 552.130 of the Government Code. The town 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 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/bhf

Ref: ID# 588084

Enc. Submitted documents

c: Requestor  
(w/o enclosures)