



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2015

Ms. Aimee Alcorn
Assistant City Attorney
Legal Department
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2015-15084

Dear Ms. Alcorn:

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# 573027 (City File No. 505).

The Corpus Christi Police Department (the "department") received a request for the personnel file and disciplinary record for a specified former employee.¹ You indicate you will redact information pursuant to section 552.147 of the Government Code.² You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹You state the department 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).

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. Gov't Code § 552.147(b).

Initially, we note you did not submit any information responsive to the request for the disciplinary record of the specified former employee. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume the department has released it to the requestor. If the department has not released any such information, it must release it. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us the information you have marked under section 552.152 relates to undercover narcotics officers. You assert release of this information would subject the officers to a substantial threat of physical harm. Based on your representations and our review, we conclude you have demonstrated release of the information at issue would subject the officers to a substantial threat of physical harm. Therefore, the department must withhold the information you have marked under section 552.152 of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). We are unable to determine whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, if the individual whose information at issue is not a licensed peace officer as defined by article 2.12, then the department may not withhold this information under section 552.117(a)(2).

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

To the extent the individual whose information is at issue is not a licensed peace officer, the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individual whose information is at issue is not currently a licensed peace officer as defined by article 2.12 and the individual timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual whose information is at issue is not currently a licensed peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the department may not withhold the information at issue under section 552.117(a)(1).

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 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)*. However, information pertaining to leave of public employees is generally a matter of legitimate public interest. *See Open Records Decision No. 336 at 2 (1982)* (names of employees taking sick leave and dates of sick leave taken not private). Further, we note that, generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, you seek to withhold the information in Exhibit C in its entirety under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the information at issue must be withheld on the basis of common-law privacy. Accordingly, the department may not withhold the information at issue in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

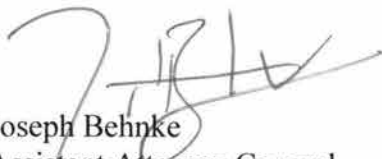
However, to the extent the individual whose information is at issue is not currently a licensed peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in that event, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how the remaining information is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the information you have marked under section 552.152 of the Government Code. To the extent the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the individual whose information is at issue is not currently a licensed peace officer as defined by article 2.12 and the individual timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code. To the extent the individual whose information is at issue is not currently a licensed peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, the department must withhold the information we have 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, 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 573027

Enc. Submitted documents

c: Requestor
(w/o enclosures)