



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
Criminal Law and Police Section
1400 South Lamar
Dallas, Texas 75215

OR2016-16901

Dear Ms. McClellan:

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# 620263 (DPD Request No. 2016-08480).

The Dallas Police Department (the "department") received a request for information pertaining to a named police officer, including a specified internal investigation. We understand you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

We note the submitted information may have been the subject of a previous request for information, the result of which this office issued Open Records Letter No. 2016-05721 (2016). In that ruling, we determined: the department must withhold: (1) the dates of birth

¹We note the department did not comply with the requirements of section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Nonetheless, sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code are mandatory exceptions that can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the department's claims under these exceptions.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

it has marked and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we marked and indicated under section 552.117(a)(2) of the Government Code; however, the department may not withhold the cellular telephone numbers at issue under section 552.117(a)(2) if a governmental body pays for the cellular telephone service; (3) the information we have marked and indicated under section 552.1175 of the Government Code, to the extent the information at issue pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b); (4) the motor vehicle record information it has marked and we marked and indicated under section 552.130 of the Government Code; (5) the employee identification numbers it marked under section 552.136 of the Government Code; (6) with the exception of the information we have marked for release, the e-mail addresses it has marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; (7) and the department must release the remaining responsive information. We have no indication the law, facts, and circumstances on which this ruling was based have changed. Accordingly, with regard to the information in the present request that is identical to information previously ruled upon by this office, the department must continue to rely on Open Records Letter No. 2016-05721 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the information in the present request was not at issue in this previous ruling, we will address the department's arguments against disclosure.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the department must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 and 552.1175 of the Government Code.³ *See* Gov't Code § 552.117(a)(2). Section 552.117 also protects a peace officer's personal cellular telephone number if a governmental body

³Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

does not pay for the cellular telephone service. *See* Open Records Decision No. 670 at 6 (2001) (section 552.117(a)(2) excepts from disclosure peace officer's cellular telephone or pager number if officer pays for cellular telephone or pager service), 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the department must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code. However, the department may not withhold the cellular telephone numbers at issue under section 552.117(a)(2) if a governmental body pays for the cellular telephone service. Further, the remaining information the department has marked is not subject to section 552.117(a)(2); and thus, may not withhold be withheld on that basis.

Some of the remaining information may be subject to section 552.1175 of the Government Code.⁴ Section 552.1175 provides, in part, the following:

(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.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 also encompasses a personal cellular telephone, unless the cellular telephone is paid for by a governmental body. *See* ORD 506 at 5-6. Some of the remaining information, which we have marked, pertains to peace officers subject to section 552.1175. Thus, to the extent the individuals whose information is at issue elect to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code; however, the department may only withhold the cellular telephone number we have marked if the cellular telephone service is not paid for by a governmental body.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information it has marked and we have marked and indicated under section 552.130 of the Government Code.

Section 552.136 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"). We understand the employee identification numbers the department has marked are used in conjunction with one additional digit to access city credit union bank accounts. Accordingly, we find the department must withhold the employee identification numbers it has marked under section 552.136 of the Government Code.

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). *See id.* § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, or an e-mail address a governmental entity maintains for one of its officials or employees. Upon review, with the exception of the information we have marked for release, we find the department must withhold the e-mail addresses it has marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. However, the information we have marked for release is not subject to section 552.137, and thus, may not be withheld on that basis.

Section 552.101 of the Government Code excepts from disclosure "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). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion,

or resignation or public employees); 432 at 2 (1984) (scope of public employee privacy is narrow).

Additionally, 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.⁵ *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 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.

However, one of the dates of birth at issue relates to an individual whose identity has been withheld and whose privacy interests are thus protected. The department may not withhold otherwise private information relating to individuals who have been de-identified. Accordingly, the city must withhold all identifiable public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find no portion of the remaining information is highly intimate or embarrassing to an identifiable individual and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

In summary, with regard to the information in the present request that is identical to information previously ruled upon by this office, the department must continue to rely on Open Records Letter No. 2016-05721 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the information in the present request was not at issue in this previous ruling, the department must withhold: (1) the date of birth we have marked under section 552.102(a) of the Government Code; (2) the information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the department may not withhold the cellular telephone numbers at issue under section 552.117(a)(2) if a governmental body pays for the cellular telephone service; (3) to the extent the individuals whose information is at issue elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the information we have marked under section 552.1175 of the Government Code; however, the department may only withhold the cellular telephone number we have marked if the cellular telephone service is not paid for by a governmental body; (4) the motor vehicle record

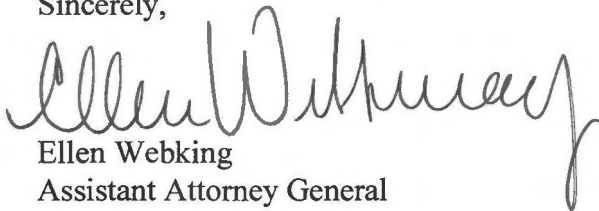
⁵Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

information it has marked and we have marked and indicated under section 552.130 of the Government Code; (5) the employee identification numbers it has marked under section 552.136 of the Government Code; (6) except for the information we marked for release, the e-mail addresses it has marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and (7) all public citizens' dates of birth, except for the individual who has been de-identified, and 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 620263

Enc. Submitted documents

c: Requestor
(w/o enclosures)