



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2016

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

OR2016-25857

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# 635004 (DPD request no. 2016-18078).

The Dallas Police Department (the "department") received a request for five categories of information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.136 of the Government Code.¹ Additionally the department states it has notified the United States Department of Justice of the request pursuant to section 552.304 of the Government Code. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Although you do not raise sections 552.102 and 552.117 of the Government Code in your brief, we understand you to raise these sections based on your markings. We further 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), (e). Nonetheless, sections 552.101, 552.102, 552.117, 552.130, and 552.136 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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity may release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

The submitted information includes an accident report. In this instance, the requestor is a person listed under section 550.065(c). Thus, the department must release the submitted accident report is confidential under section 550.065(c) of the Transportation Code.

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 you 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). In this instance, however, it is unclear whether the individual whose information is at issue is a currently-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 a currently-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.

If the information we have marked under section 552.117 pertains to an individual who is no longer a licensed peace officer, then the information at issue may be subject to

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

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 id.* § 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual at issue is no longer a peace officer as defined by article 2.12, and to the extent this 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.

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 you have marked 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"). You state 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 you have marked under section 552.136 of the Government Code.

In summary, the department must release the submitted accident report pursuant to section 550.065(c) of the Transportation Code. The department must withhold the date of birth you have marked under section 552.102(a) of the Government Code. To the extent the individual whose information is at issue is a currently-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 at issue is no longer a peace officer as defined by article 2.12, and to the extent this 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. The department must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The department must

withhold the employee identification numbers you have marked under section 552.136 of the Government Code. The department must release the remaining information.⁴

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 635004

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

⁴We note the requestor has a special right of access to some of his client's information being released. See Gov't Code § 552.023(a) ("person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the department receives another request for this information from a different requestor, then the department must again seek a decision from this office.