



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 27, 2016

Ms. Cynthia Trevino
Counsel for the City of Rosenberg
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745-5320

OR2016-28372

Dear Ms. Trevino:

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# 639565.

The City of Rosenberg (the "city"), which you represent, received a request for all records related to three named officers of the city's police department.¹ You state the city is withholding access device numbers pursuant to section 552.136(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² You argue some of the submitted information does not consist of public information subject to

¹You state the city 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 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 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. *See id.* § 552.147(b).

the Act. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you indicate the city will withhold some of the submitted information, which you have marked, pursuant to Open Records Decision No. 684 (2009). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy; W-2 and W-4 forms under section 552.101 of the Government Code in conjunction with 26 U.S.C. § 6103(a); and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. However, we note a governmental body is not authorized to withhold an L-1 Appointment Application under Open Records Decision No. 684. Accordingly, we will consider other exceptions to disclosure of this information.

Next, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("commission") identification numbers.³ Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body; for a governmental body and the governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body. Gov't Code. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. ORD 581 at 5. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the commission's website. Accordingly, we find the officers' commission identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification numbers are not subject to the Act and the city is not required to release them to the requestor.

³The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. See Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

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.”⁴ Gov’t Code § 552.102(a). The Texas Supreme Court 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). Accordingly, the city must withhold the marked city employees’ dates of birth under section 552.102(a) of the Government Code.⁵

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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 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). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we agree the city must withhold the information you marked in green under section 552.101 of the Government Code in conjunction with common-law privacy. We further find some of the remaining information,

⁴The 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).

⁵As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information you marked in green and the information we marked, as well as all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy.

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 sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 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). We further note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Upon review, we find some of the information you marked in lavender is not subject to section 552.117 of the Government Code. This information, which we have marked for release, may not be withheld on that basis. Accordingly, except for the information we marked for release, the city must withhold the information you have marked in lavender and grey, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.⁶

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. You state the city is withholding certain motor vehicle record information pursuant to section 552.130(c) of the Government Code.⁷ The city must withhold the additional motor vehicle record information we have marked under section 552.130 of the Government Code.

Some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are

⁶As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

⁷Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

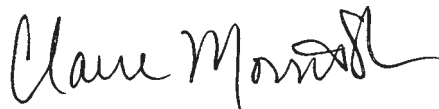
copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the commission identification numbers within the submitted documents are not subject to the Act and the city need not release them. The city must withhold (1) the marked city employees' dates of birth under section 552.102(a) of the Government Code; (2) the information you marked in green, the information we marked, and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) with the exception of the information we marked for release, the information you marked in lavender and grey, as well as the additional information we marked, under section 552.117(a)(2) of the Government Code, but may withhold the marked cellular telephone number only if a governmental body does not pay for the cellular telephone service; and (4) the additional motor vehicle record information we have marked under section 552.130 of the Government Code. The city must release the remaining responsive information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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 that reads "Claire V. Morris Sloan". The signature is written in a cursive, flowing style.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 639565

Enc. Submitted documents

c: Requestor
(w/o enclosures)