



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2017

Ms. Michelle Buendia
Assistant City Attorney
Criminal Law & Police Section
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2017-00083

Dear Ms. Buendia:

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# 640179 (ORR# 2016-11662).

The Dallas Police Department (the "department") received a request for specified information pertaining to all employees who resigned or were terminated during a specified time period. You state you will release some information to the requestor. We understand you will redact information pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.102, 552.117, 552.136, and 552.152 of the Government Code.² We have

¹Section 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* Gov't Code § 552.147(b).

²Although you also raise section 552.101 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302. Further, although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the department holds in its capacity as an employer. We note the department did not comply with the requirements of section 552.301 of the Government Code. *See id.* § 552.301(b). Nevertheless, sections 552.102, 552.117, 552.136, and 552.152 make information confidential and 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 raised exceptions.

considered the exceptions you claim and reviewed the submitted representative sample of information.³

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 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 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. 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. Accordingly, to the extent the individual is a currently licensed peace officer as defined by article 2.12, the department must withhold the information you marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual at issue is not a currently licensed police officer as defined by article 2.12, the information you marked may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual at issue is not a currently licensed peace officer, then the individual’s personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information you marked under section 552.117(a)(1) of the Government

³We 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.

Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the department may not withhold the marked information under section 552.117(a)(1) 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand the employee identification number you marked is used in conjunction with one additional digit to access City of Dallas credit union bank accounts. Accordingly, we find the department must withhold the employee identification number you marked under section 552.136 of the Government Code.

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.

Id. § 552.152. You state some of the remaining information contains the identifying information of an undercover officer and release of the identifying information of this undercover officer would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 of the Government Code is applicable to the information you indicated. Accordingly, the department must withhold the identifying information of the undercover officer, which you indicated, under section 552.152 of the Government Code.

In summary, the department must withhold the date of birth you marked under section 552.102(a) of the Government Code. If the individual at issue is a currently licensed peace officer as defined by article 2.12, then the department must withhold the information you marked under section 552.117(a)(2) of the Government Code. If the individual at issue is not a currently licensed peace officer, then, to the extent the individual at issue timely requested confidentiality pursuant to section 552.024, the department must withhold the information you marked under section 552.117(a)(1) of the Government Code. The department must withhold the employee identification number you marked under section 552.136 of the Government Code. The department must withhold the identifying information of the undercover officer, which you indicated, under section 552.152 of the Government Code. 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,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', written over a horizontal line.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/akg

Ref: ID# 640179

Enc. Submitted documents

c: Requestor
(w/o enclosures)