



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 3, 2017

Ms. Barbara Boulware-Wells  
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OR2017-04620

Dear Ms. Boulware-Wells:

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# 647677.

The City of Dublin (the "city"), which you represent, received a request for certain information pertaining to a named police officer. You state the city will release some information. You also state, within the information the city will release, the city has redacted information pursuant to section 552.1175(f) of the Government Code, and information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, and 552.136 of the

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<sup>1</sup>We note section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b) without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, dates of birth, social security number, and family member information of certain individuals who properly elect to keep this information confidential. *See* Gov't Code § 552.1175(b), (c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *See id* § 552.1175(g), (h). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number.<sup>3</sup> Section 552.002(a) of the Government Code 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:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) 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. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor.

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<sup>2</sup>Although you do not raise section 552.136 of the Government Code in your brief, we understand you to raise this exception based on the substance of your argument.

<sup>3</sup>The 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 552.101 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 protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find you have failed to demonstrate any portion of the remaining information is subject to section 6103(a) of title 26 of the United States Code. Consequently, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 6103(a) of title 6 of the United States Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See* Gov’t Code § 11.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 11.089(b)(1). Other entities specified in chapter 11 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 11.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. We note the term CHRI does not include driving record

information. *See id.* § 11.082(2)(B). Upon review, we find the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>4</sup> However, we find you have not demonstrated the remaining information consists of CHRI for purposes of chapter 411 of the Government Code. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

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[.]” *Id.* § 52.102(a). The Texas Supreme Court held section 52.102(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 city must withhold the public employees’ dates of birth we have marked under section 552.102(a) of the Government Code.<sup>5</sup> However, you have not demonstrated section 552.102(a) is applicable to the remaining information, and the city may not withhold this information on that basis.

Section 552.101 of the Government Code also 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 also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 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).

Further, 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

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>6</sup> *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, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Record Decision Nos. 600 at 9 (1992) (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). Furthermore, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>7</sup> However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. 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. *Id.*

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<sup>6</sup>As discussed above, section 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).

<sup>7</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.117(a)(2) protects a peace officer's personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. Open Records Decision No. 670 at 6 (2001); *cf.* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). We note an individual's personal post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (legislative history makes clear that purpose of section 552.117 is to "protect public employees from being harassed *at home*" (emphasis added) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985))). We also note section 552.117(a)(2) is not applicable to a former spouse or the fact that a governmental employee has been divorced. Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code, including the cellular telephone number if the cellular telephone service is not paid for by a governmental body.<sup>8</sup> However, we find no portion of the remaining information constitutes the home address, home telephone number, emergency contact information, social security number, or family member information of a peace officer. Accordingly, the city may not withhold any of the remaining information under section 552.117(a)(2) of the Government Code.

Section 552.117(a)(4) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(4). Upon review, we find you have failed to demonstrate section 552.117(a)(4) is applicable to the remaining information. Therefore, the city may not withhold this information under section 552.117(a)(4) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining information pertains to peace officers not employed by the city. Thus, to the extent the information we have marked consists of the home addresses or telephone numbers of currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. If the individuals whose information we have marked are no longer licensed peace officers or no election is made, the city may not withhold this information under section 552.1175 of the Government Code.

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<sup>8</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

However, upon review, we find you have failed to demonstrate the applicability of section 552.1175 of the Government Code to the remaining information. Therefore, the city may not withhold the remaining information on this basis.

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 id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, upon review, we find you have failed to demonstrate the applicability of section 552.130 to any of the remaining information. Thus, the city may not withhold this information on that basis.

Section 552.136 of the Government Code states “[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 also id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the information we have marked under section 552.136 of the Government Code. However, the remaining information is not confidential under section 552.136, and the city may not withhold it on that ground.

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).<sup>9</sup> *Id.* § 552.137(a)-(c). The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the public employees' dates of birth we have marked under section 552.102(a) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code, including the cellular telephone number if the cellular telephone service is not paid for by a governmental body. To the extent the

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<sup>9</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information we have marked consists of the home addresses or telephone numbers of currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the information we have marked under section 552.136 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The city 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 647677

Enc. Submitted documents

c: Requestor  
(w/o enclosures)