



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2017

Ms. Elizabeth Walker
City Secretary
City of Weslaco
255 South Kansas Avenue
Weslaco, Texas 78596-6285

OR2017-06724

Dear Ms. Walker:

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# 651696.

The City of Weslaco (the "city") received a request for information pertaining to a specified arrest. The city claims the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.132, 552.1325, 552.151, and 552.152 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 or section 552.1175 of the Government Code. *Id.* § 552.117(a)(2). However, section 552.117 applies only to information that a governmental body holds in an employment context. The submitted information consists of law enforcement records and, thus, we find the city does

¹We note the city did not comply with the requirements of section 552.301(b) of the Government Code in raising section 552.101 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, section 552.101 can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. Thus, we will consider the claim of the city under that section.

not maintain it in an employment capacity. Accordingly, the city may not withhold any of the submitted information under section 552.117 of the Government Code.

Section 552.1175 of the Government Code may be applicable to some of the submitted information. Section 552.1175 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. *See id.* § 552.1175. Section 552.1175 applies to “criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(7). The submitted information pertains to an agent of the United States Immigration and Customs Enforcement. Thus, the city must withhold the information we have marked under section 552.1175 if the individual elects to restrict access to this information in accordance with section 552.1175(b). However, if the individual does not elect to restrict access to this information in accordance with section 552.1175(b), then the city may not withhold this information under section 552.1175.

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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense is confidential under common-law privacy. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Nevertheless, information concerning domestic violence generally does not come within the scope of common-law privacy. Open Records Decision No. 611 (1992) (“[a]n assault by one family member on another is a crime, not a family matter normally considered private”). The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). Accordingly, the city must withhold the dates of birth of public citizens in the remaining documents under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note one of the dates of birth pertains to an individual whose identity may be protected under section 552.1175 of the Government Code.

In that instance, the information at issue relates to an individual who has been de-identified and whose privacy interest is, thus, protected, and the department may not withhold that individual's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.108 of the Government Code provides in part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body claiming section 552.108(a)(1) or 552.108(b)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The city does not inform us the remaining information pertains to an ongoing criminal investigation or prosecution, nor has the city explained how its release would interfere with the detection, investigation, or prosecution of crime. Thus, the city has not met its burden under section 552.108(a)(1) or 552.108(b)(1). A governmental body claiming section 552.108(a)(2) or 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. The city has not demonstrated the investigation at issue has concluded in a result other than conviction or deferred adjudication. Thus, the city has not met its burden under section 552.108(a)(2) or 552.108(b)(2). Section 552.108(a)(3) is also inapplicable as the remaining information does not relate to a threat against a police officer. *See* Gov't Code § 552.108(a)(3). Finally, the city does not assert the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the city may not withhold any of the remaining information under section 552.108.

Section 552.132(b) of the Government Code provides

The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Id. § 552.132(b). The city holds the information at issue, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not

applicable to this information. Accordingly, the city may not withhold any of the information at issue on that ground.

Section 552.1325 of the Government Code provides as follows:

(a) In this section:

(1) "Crime victim" means a person who is a victim as defined by Article 56.32, Code of Criminal Procedure.

(2) "Victim impact statement" means a victim impact statement under Article 56.03, Code of Criminal Procedure.

(b) The following information that is held by a governmental body or filed with a court and that is contained in a victim impact statement or was submitted for purposes of preparing a victim impact statement is confidential:

(1) the name, social security number, address, and telephone number of a crime victim; and

(2) any other information the disclosure of which would identify or tend to identify the crime victim.

Id. § 552.1325. Upon review, we find the city has not established any of the remaining information consists of a victim impact statement, or information submitted for purposes of preparing a victim impact statement, as defined by article 56.03 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 56.03. Accordingly, the city may not withhold any of the remaining information under section 552.1325.

Section 552.151(a) of the Government Code provides,

The following information that pertains to a biological agent or toxin identified or listed as a select agent under federal law, including under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. No. 107-188) and regulations adopted under that Act, is excepted from the requirements of Section 552.021:

(1) the specific location of a select agent within an approved facility;

(2) personal identifying information of an individual whose name appears in documentation relating to the chain of custody of select agents, including a materials transfer agreement; and

(3) the identity of an individual authorized to possess, use, or access a select agent.

Gov't Code § 552.151(a). The city asserts some of the information at issue is excepted from disclosure under section 552.151 because it “identifies several other Law Enforcement Agents, within the same federal agency now involved as a chain of custody in their investigative due diligence, [including] their personal contact information[.]” However, the city does not assert any of the information at issue pertains to a biological agent or toxin identified or listed as a select agent under federal law. *See id.* Therefore, the city may not withhold any of the remaining information under section 552.151(a).

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 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. Upon review, we find the city has not established release of the remaining information would subject an employee or officer of a governmental body to a “substantial threat of physical harm.” Therefore, the city may not withhold any of the remaining information under section 552.152.

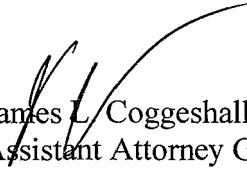
To conclude, the city must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The city must also withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; however, to the extent a date of birth relates to an individual who has been de-identified pursuant to section 552.1175 of the Government Code, the department may not withhold the date of birth at issue under section 552.101 on that ground. 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 651696

Enc. Submitted documents

c: Requestor
(w/o enclosures)