



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2017

Mr. L. Brian Narvaez  
Counsel for City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
McKinney, Texas 75081

OR2017-08862

Dear Mr. Narvaez:

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# 654874.

The City of McKinney (the "city"), which you represent, received a request for all information concerning a specified incident and internal affairs investigation resulting from the specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request because it does not pertain to the specified investigation. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

Section 552.108(b) of the Government Code excepts from disclosure "[a]n 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 . . . if: . . . (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[.]" Gov't Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. *See id.*

§ 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W. 3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state some of the information at issue pertains to a concluded internal investigation that did not result in conviction or deferred adjudication. We note the information at issue pertains to an internal affairs investigation by the city's police department and includes an incident report related to the internal affairs investigation. Upon review, we find you have failed to explain how the incident report consists of internal records or notations relating to criminal cases that concluded in a result other than conviction or deferred adjudication. Further, because the remaining information is part of an internal affairs investigation that was purely administrative in nature, we find you have failed to demonstrate the applicability of section 552.108(b)(2) to the information at issue. Consequently, the city may not withhold any of the information on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find some of the submitted video recordings contain information subject to section 552.130. You state the city does not have the technological capability to redact the motor vehicle record information from the video recordings at issue. Accordingly, the city must withhold the video recordings we have indicated in their entireties under section 552.130 of the Government Code.<sup>1</sup> *See Open Records Decision No. 364 (1983)*.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.<sup>2</sup> 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(a)(2) is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 670 at 6 (2001)* (Gov't Code § 552.117(a)(2) excepts

---

<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>2</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)*.

from disclosure peace officer's cellular telephone number if officer pays for service), 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 note section 552.117(a) is not applicable to an individual's girlfriend. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12. If the individual at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, then the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the cellular telephone number if a governmental body did not pay for the cellular telephone service. Conversely, if the individual at issue is not currently a licensed peace officer as defined by article 2.12, the city may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

If the individual whose information is at issue is not currently a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which exempts from disclosure the home addresses and telephone numbers, 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. Gov't Code § 552.117(a)(1). As previously mentioned, section 552.117(a) is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Additionally, as noted above, section 552.117(a) is not applicable to an individual's girlfriend. 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). The city may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024 the city may not withhold the information we have marked under section 552.117(a)(1) 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. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id* § 552.1175(a)(1). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. We also

note section 552.1175 is not applicable to an individual's girlfriend. Upon review, we find some of the remaining information pertains to a peace officer and is held by the city in a non-employment capacity. Thus, to the extent the information we have marked pertains to a currently licensed peace officer and the officer elects to restrict access to his 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, provided the cellular service is not paid for by a governmental body. If the individual whose information we have marked is no longer a licensed peace officer or no election is made, the city may not withhold this information under section 552.1175 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992). The 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.). We note information relating to domestic violence is generally not protected by common-law privacy. *See* Open Records Decision No. 611 at 1 (1992) (family violence is a crime, not a private matter). Upon review, we find portions of the information at issue satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You state the city lacks the technological capability to redact information from the video recordings at issue. Accordingly, we find the city must withhold the information we have marked and the video recordings we indicated in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. ORD 364. However, we note additional information we have marked pertains to an individual whose identity may be protected under section 552.117 or 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 city may not withhold that information under section 552.101 in conjunction with common-law privacy. Accordingly, to the extent the additional information we marked relates to an identifiable individual, the city must withhold all public citizens' dates of birth and the information we marked under section 552.101 in conjunction with common-law privacy. However, the city has failed to demonstrate the remaining information is highly intimate or embarrassing and

of no legitimate public interest. Thus, the city not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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). *See* Gov’t Code § 552.137(a)-(c). Upon review, we find the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the city must withhold the video recordings we have indicated in their entirety under section 552.130 of the Government Code. If the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual whose information is at issue is not currently a licensed police officer, then to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked pertaining to this individual under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. To the extent the information we have marked pertains to a currently licensed peace officer and the officer elects to restrict access to his 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, provided the cellular service is not paid for by a governmental body. The city must withhold the information we have marked and the video recordings we have indicated in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the additional information we have marked pertains to an individual who has not been de-identified under section 552.117 of the Government Code or section 552.1175 of the Government Code, the city must withhold all public citizens’ dates of birth and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The remaining responsive information must be released.<sup>3</sup>

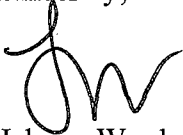
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

---

<sup>3</sup>The information being released contains a social security number. 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* Gov’t Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read 'Jahna Ward', written in a cursive style.

Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/eb

Ref: ID# 654874

Enc. Submitted documents

c: Requestor  
(w/o enclosures)