



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 15, 2017

Ms. Kristen Mills
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas, 77521

OR2017-10412

Dear Ms. Mills:

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# 658407 (Public Information Request 8365).

The Baytown Police Department (the "department") received a request for a specified incident report. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or

¹Although you raise section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise for information not held in an employment context.

embarrassing. *See* Open Records Decision No. 455 (1987). 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.). Upon review, we agree the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure” and “commissioned security officers as defined by section 1702.002, Occupations Code[.]” *Id.* § 552.1175(a)(1), (4). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988). Upon review, we find some of the remaining responsive information consists of personal information of individuals who may be among the types of individuals listed in section 552.1175(a). Thus, to the extent the information we marked relates to peace officers or commissioned security officers who elect to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services. If the individuals whose information is at issue are not currently commissioned security officers or peace officers or did not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals in question are licensed police officers or commissioned security officers who elect to restrict access to the information we marked in accordance with section 552.1175(b), then their information must be withheld under section 552.1175 of the Government Code. However, if the marked cellular telephone numbers may be withheld if a governmental body does not pay for the cellular telephone service. The remaining information must be released.

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 'Patrick P. Mehaffy', with a long horizontal line extending to the right.

Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/eb

Ref: ID# 658407

Enc. Submitted documents

c: Requestor
(w/o enclosures)