



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 26, 2017

Ms. Stacie S. White  
Counsel for the City of Lake Worth  
Taylor, Olson, Adkins, Sralla, Elam  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2017-16822

Dear Ms. White:

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# 667929.

The Lake Worth Police Department (the "department"), which you represent, received a request for statements and interviews pertaining to a specified incident and named officer. You state the department will release some information to the requestor. You state the department will redact certain social security numbers under section 552.147(b) of the Government Code and certain information pursuant to the previous determination in Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

---

<sup>1</sup>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). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. See ORD 684.

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 embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we conclude the information we marked and indicated meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You state the department does not possess the technological capability to redact information from audio files. However, because the department had the ability to copy the submitted audio recordings in order to submit them for our review, we believe the department has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

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. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Some of the submitted audio recordings contain information subject to section 552.117. You state the department does not possess the technological capability to redact information from audio files. As stated above, we believe the department has the capability to produce a copy of only the non-confidential portions of the audio recordings because the department had the ability to copy the submitted audio recordings in order to submit them for our review. Therefore, upon review, we find the department must withhold the information we marked and indicated under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Further, we find the city has failed to demonstrate any of the remaining information is subject to section 552.117 of the Government Code and may not withhold any of the remaining information on that 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* Gov't Code § 552.130. Upon review, we find one of the submitted audio recordings contains confidential motor vehicle record information. While you state the department does not possess the technological capability to redact information

from audio files, because the department had the ability to copy the submitted audio recordings in order to submit them for our review, we believe the department has the capability to produce a copy of only the non-confidential portions of the audio recordings. Accordingly, the department must withhold the information we indicated within the audio recording at issue under section 552.130 of the Government Code. However, we find the remaining audio recordings do not contain motor vehicle record information. Accordingly, the department may not withhold any portion of the remaining information under section 552.130 of the Government Code.

In summary, the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we marked and indicated under section 552.117(a)(2) of the Government Code; however, the department may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. The department must withhold the information we indicated within the audio recording at issue under section 552.130 of the Government Code. The department must release the remaining information.<sup>2</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.

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,



Emily Kunst  
Attorney  
Open Records Division

EK/eb

---

<sup>2</sup>We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(b) (a governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 667929

Enc. Submitted documents

c: Requestor  
(w/o enclosures)