



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-17082

Dear Mr. Kopp:

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# 668662 (ORR# W167664).

The City of San Antonio (the "city") received a request for information pertaining to the indefinite suspension of a named officer. The city claims the requested information is excepted from disclosure under sections 552.117, 552.1175, and 552.142 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

Initially, we note the submitted information includes photographs that do not appear to be responsive to the request for information because they do not pertain to the investigation that resulted in the indefinite suspension at issue. 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.

¹Although the city raises section 552.101 in conjunction with a notice of order of nondisclosure, we note the proper exception to raise is section 552.142.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.142(a) of the Government Code provides, “[i]nformation is excepted from the requirements of Section 552.021 if an order of nondisclosure of criminal history record information [“CHRI”] with respect to the information has been issued under Subchapter E-1, Chapter 411.” Gov’t Code § 552.142(a). Section 411.0725 of the Government Code authorizes a person placed on deferred adjudication community supervision for certain offenses to petition the court “for an order of nondisclosure,” which prohibits criminal justice agencies from disclosing to the public [CHRI] related to the offense giving rise to the deferred adjudication community supervision. *See id.* § 411.0725(d). A criminal justice agency may only disclose CHRI that is the subject of the order only to the following: other criminal justice agencies, for criminal justice or regulatory purposes; non-criminal justice agencies listed in section 411.0765(b); or the person who is the subject of the order. *See id.* § 411.0765.

The city has submitted an order of nondisclosure issued pursuant to subchapter E-1, chapter 411 of the Government Code that prohibits the release of certain CHRI. Therefore, the city must withhold this information, which we have marked and indicated, under section 552.142 of the Government Code. However, the city has failed to establish the order of nondisclosure at issue prohibits it from releasing of any of the remaining information at issue. Therefore, the city may not withhold any of the remaining responsive information on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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.). Thus, the city must withhold the dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

The city asserts section 552.117 of the Government Code is applicable to some of the remaining information. Section 552.117(a)(2) 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. 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.* It is unclear whether the former employee at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code if the employee at issue is a currently licensed peace officer as defined by article 2.12. If the former employee is no longer a licensed peace

officer as defined by article 2.12, then the city may not withhold this information under section 552.117(a)(2).

Nevertheless, if the former employee is no longer a licensed peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, 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 of the Government Code. *See* Gov't Code § 552.117(a)(1). 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). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the former employee is no longer a currently licensed peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information at issue under section 552.117(a)(1) of the Government Code. Conversely, to the extent the former employee is no longer currently licensed as a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the city may not withhold the information at issue under section 552.117(a)(1).

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.³ *See* Gov't Code § 552.130. The city must withhold the motor vehicle record information we have marked and indicated in the remaining information under section 552.130 of the Government Code.

To conclude, the city must withhold the information we have marked and indicated under section 552.142 of the Government Code. The city must withhold the dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code if the employee at issue is a currently licensed peace officer as defined by article 2.12. To the extent the former employee is no longer a currently licensed peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information at issue under section 552.117(a)(1) of the Government Code. The city must

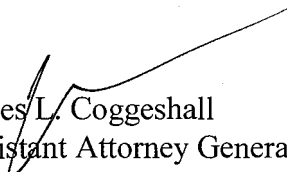
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

withhold the information we have marked and indicated under section 552.130 of the Government Code. The city must release the remaining responsive 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# 668662

Enc. Submitted documents

c: Requestor
(w/o enclosures)