



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2017

Ms. Josi Diaz
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2017-17430

Dear Ms. Diaz:

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# 669332 (ORR# 2017-07381).

The Dallas Police Department (the "department") received a request for all employment records pertaining to a named department officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code.¹ 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 named officer. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.

¹We note, and you acknowledge, the department failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because sections 552.101, 552.117, 552.1175, and 552.130 can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these sections to the information at issue. *See id.* § 552.302; *see also Paxton v. City of Dallas*, No. 15-0073, 2017 WL 469597 (Tex. Feb. 3, 2017).

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 information protected by other statutes, such as section 58.007 of the Family Code.² Section 58.007 provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997, are confidential under section 58.007(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007(c), child means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See id.* § 51.02(2). Upon review, we find a portion of the submitted information, which we marked, involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.³

Section 552.101 of the Government Code also encompasses section 773.091 of the Health and Safety Code, which provides, in relevant part:

²We note you raise section 552.101 of the Government Code in conjunction with 58.106 of the Family Code. However, section 58.106 of the Family Code pertains to the confidentiality of information in the juvenile justice system maintained by the Texas Department of Public Safety, while section 58.007 of the Family Code is applicable to law enforcement records concerning a child. Accordingly, we address your argument under section 58.007 rather than section 58.106 of the Family Code.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. Upon review, we find the information we marked constitutes records of the identity, evaluation, or treatment of a patient by EMS personnel. Thus, except for the information subject to section 773.091(g), the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”⁴ Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the department must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code also 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 embarrassing. *See* Open Records Decision

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Further, this office has determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). 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.).

Upon review, we conclude some of the responsive information at issue, which we marked, meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁵ We note the information at issue includes the date of birth of an individual who has been de-identified and whose privacy interest is, thus, protected. Accordingly, the department may not withhold the date of birth of the de-identified individual under section 552.101 on the basis of common-law privacy. Further, we find no portion of the remaining responsive information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold any of the remaining responsive 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 exempts 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. Upon review, we find the information we marked under section 552.117 consists of the personal information of a peace officer who was employed by the department, and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12, the department must withhold the information we marked under

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 552.117(a)(2) of the Government Code. Conversely, to the extent the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the department may not withhold the marked information under section 552.117(a)(2). However, we find none of the remaining information is subject to section 552.117(a)(2), and the department may not withhold any of the remaining responsive information on that basis.

If the information we marked under section 552.117 pertains to an individual who is no longer a licensed peace officer, then the marked information 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. Therefore, to the extent the individual whose information is at issue is no longer a peace officer as defined by article 2.12, and this individual timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue is no longer a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, the department may not withhold the marked information under section 552.117(a)(1).⁶

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*. Accordingly, the department must withhold the motor vehicle record information you marked, and the additional information we marked, under section 552.130 of the Government Code.

In summary, this ruling does not address the public availability of the information that is not responsive to the request, and the department is not required to release such information in response to this request. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Except for the information subject to section 773.091(g), the department must

⁶Regardless of the applicability of section 552.117 of the Government Code, we note 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)*.

withhold the information we marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The department must withhold the date of birth we have marked under section 552.102(a) of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose information is at issue is a currently licensed peace officer as defined by article 2.12, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. To the extent the individual whose information is at issue is no longer a peace officer as defined by article 2.12, and this individual timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. The department must withhold the motor vehicle record information you marked, and the additional information we marked, under section 552.130 of the Government Code. 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 669332

Enc. Submitted documents

c: Requestor
(w/o enclosures)