



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

August 29, 2017

Mr. John B. Strong  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Forth Worth, Texas 76102

OR2017-19774

Dear Mr. Strong:

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# 673501 (PIR No. W062567).

The City of Fort Worth (the "city") received a request for information pertaining to a named city employee. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the submitted TCOLE identification number is a unique computer-generated number assigned to a peace officer for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the submitted TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted TCOLE number is not subject to the Act and the city need not release this information to the requestor.<sup>1</sup>

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 section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code. § 1701.454. The remaining information includes a F-5 Separation of Licensee form that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the F-5 form indicates the officer at issue did not resign and was not terminated due to substantiated incidents of excessive force or violations of the

---

<sup>1</sup>As our ruling is dispositive, we need not address the city's remaining argument against disclosure of the information at issue.

law other than traffic offenses. Therefore, the city must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.<sup>2</sup>

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 demonstrated. *See id.* at 681-82. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. 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 find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with 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.<sup>3</sup> *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. In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12. If the

---

<sup>2</sup>As our ruling is dispositive, we need not address the city's remaining argument against disclosure of the information at issue.

<sup>3</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)*.

individuals at issue are currently licensed peace officers as defined by article 2.12, then the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individuals at issue are not currently licensed police officers as defined by article 2.12, the information we marked may not be withheld under section 552.117(a)(2) of the Government Code.

If the individuals at issue are not currently licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts 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. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold the information at issue under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals at issue made timely elections under section 552.024, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals at issue did not make timely elections under section 552.024, their information may not be withheld under section 552.117(a)(1) of the Government Code.

In summary, the submitted TCOLE number is not subject to the Act and the city need not release this information to the requestor. The city must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. In the event the individuals at issue are not currently licensed peace officers, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. The city must release the remaining 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](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 "Kaelan A. Henze". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kaelan A. Henze  
Assistant Attorney General  
Open Records Division

KAH/eb

Ref: ID# 673501

Enc. Submitted documents

c: Requestor  
(w/o enclosures)