



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 1, 2017

Ms. Donna L. Maison  
Certified Paralegal  
City of Mansfield  
1305 East Broad Street  
Mansfield, Texas 76063

OR2017-20039

Dear Ms. Maison:

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# 675053.

The City of Mansfield (the "city") received a request for appeal procedures, meet and confer agreements and related memorandums of understanding, information related to a specified investigation, personnel and policy handbooks, offense reports related to a specified incident, and the personnel file of a named officer of the city's police department (the "department"). The city indicates it does not maintain information responsive to a portion of the request.<sup>1</sup> The city states it has released some of the requested information. The city claims the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

---

<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("commission") identification number.<sup>2</sup> Section 552.002(a) 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 by a governmental body; for a governmental body and the governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or 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. ORD 581 at 5. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the commission's website. Accordingly, we find the officer's commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification number is not subject to the Act and the city is not required to release it to the requestor.

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." 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 submitted information contains the date of birth of the named department officer. However, the submitted documents reveal the requestor is an attorney for the officer at issue. *See* Gov't Code § 552.023(a) ("person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to her client that would otherwise be confidential under section 552.102(a). Accordingly, the city may not withhold the requestor's client's date of birth under section 552.102(a) of the Government Code. Further, upon review, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the city may not withhold any of the information on that basis.

---

<sup>2</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

We note some of the responsive information is subject to sections 552.101 and 552.1175 of the Government Code.<sup>3</sup> Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted W-2 and W-4 forms, which we have marked, constitute tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which applies to L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms. L-2 and L-3 forms are required by the commission. Section 1701.306 provides the following:

- (a) The commission may not issue a license to a person unless the person is examined by:
  - (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
  - (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.
  
- (b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a)

---

<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Therefore, the city must withhold the submitted L-2 and L-3 declaration forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, 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 commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information includes information that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the named officer resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 1703.306 of the Occupations Code. Section 1703.306 provides, in relevant part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a), (b). The remaining information contains information acquired from a polygraph examination, which we have marked. However, in this instance, the requestor is the examinee's attorney, and thus is the examinee's authorized representative. If the examinee designates the requestor in writing, then the city has the discretion to release the marked polygraph information to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code. *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees). Otherwise, the city must withhold the marked polygraph information under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations 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. 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 find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Some of the remaining information, which we have marked, relates to an individual who was licensed as a peace officer of another law enforcement agency. However, we are unable to determine from the information provided whether the individual at issue is currently a licensed peace officer. Thus, we must rule conditionally. Accordingly, to the extent the information we marked relates to an individual who is currently licensed as a peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the marked information under section 552.1175 of the Government Code. Conversely, if the individual whose information is at issue is not currently licensed as a peace officer or does 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 officer's commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code and the city is not required to release it to the requestor. The city must withhold the marked W-2 and W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the marked L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The city must withhold the information we marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code. If the requestor is designated by the examinee, then the city has the discretion to release the marked polygraph information to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code; otherwise, the city must withhold the marked polygraph information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. To the extent the information we marked relates to an individual who is currently licensed as a peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the marked information under section 552.1175 of the Government Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must release the remaining responsive information to this requestor.<sup>4</sup>

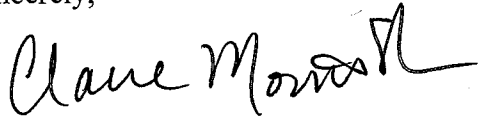
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

---

<sup>4</sup>The information being released contains social security numbers. 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). We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a); ORD 481 at 4; *see also* Gov't Code § 552.137(b). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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 that reads "Claire Morris Sloan". The signature is written in a cursive style with a large, stylized "C" and "M".

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bw

Ref: ID# 675053

Enc. Submitted documents

c: Requestor  
(w/o enclosures)