



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2017

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

OR2017-25213

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# 683164.

The City of Southlake (the "city"), which you represent, received a request for a specified employment application. You state the city will redact social security numbers pursuant to section 552.147 of the Government Code and additional information in accordance with Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code.² 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

¹Section 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.

²We note although the city also raises section 552.117 of the Government Code, we note section 552.1175 is the proper exception to raise for information not held in an employment context.

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 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The 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 the information you marked and the additional information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Upon review, we find some of the submitted information, which we have marked, pertains to peace officers and is held by the city in a non-employment capacity. Thus, to the extent the information we have marked pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the city may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service. If the individuals whose information is at issue are no longer licensed peace officers or no elections are made, the city may not withhold this information under section 552.1175 of the Government Code. However, we find the city has failed to

demonstrate any of the remaining information at issue is subject to section 552.1175 of the Government Code. Accordingly, the city 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 or 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. Gov't Code § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information you marked as well as the information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information you marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we have marked pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold the marked information under section 552.1175 of the Government Code; however, the city may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service. The city must withhold the motor vehicle record information you marked as well as the information we have marked under section 552.130 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, 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/som

Ref: ID# 683164

Enc. Submitted documents

c: Requestor
(w/o enclosures)