



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2017

Ms. Amy Bockes
City Secretary
City of Oak Point
100 Naylor Road
Oak Point, Texas 75068

OR2017-25723

Dear Ms. Bockes:

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# 683410 (ORR Nos. 2017-08-132 & 2017-08-133).

The City of Oak Point (the "city") received two requests from the same requestor for a formal complaint and all other information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the city received the requests for information on August 18, 2017. This office does not count the date the request was received or days a governmental body is closed for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the city's ten-business-day deadline was September 1, 2017. However, you did not request a ruling from this office until September 5, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the city failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling

reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although you claim section 552.108 of the Government Code for the submitted information, you have failed to establish a compelling reason to address your claimed exception. However, sections 552.101, 552.102, 552.117, 552.1175, and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness.¹ Therefore, we will address the applicability of these sections to the submitted information.

Section 552.117(a)(1) of the Government Code 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 of the Government Code. Gov't Code § 552.117(a)(1). We note the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See id.* § 552.117(a)(1) (providing that employees of governmental entities may protect certain personal information in the hands of their employer); Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). We note section 552.117 is also applicable to personal cellular telephone and pager numbers, provided the services are not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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 only be withheld under section 552.117(a)(1) 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 or not later than the 14th day after the date on which the employee began employment with the city. *See* Gov't Code § 552.024(b). Upon review, we conclude that, if the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked pertaining to this individual under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the service. Conversely, to the extent the employee at issue did not timely request confidentiality under section 552.024, the city may not withhold this information under section 552.117(a)(1).

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." *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a)

¹The 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).

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 city 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 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 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 court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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 dates of birth we have marked 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. *See* Gov’t Code § 552.1175. 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) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The city must withhold the cellular telephone number we have marked under section 552.1175 if the individual at issue is a licensed peace officer, she elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not provided to the individual at issue at public expense. However, the city may not withhold this information under section 552.1175 if the individual is not a currently licensed peace officer, she does not elect to restrict access to this information in accordance with section 552.1175(b), or the cellular telephone service was provided to her at public expense.

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(a). Portions of the remaining information are subject to section 552.130. Therefore, the city must withhold the information we have marked under section 552.130 of the Government Code.

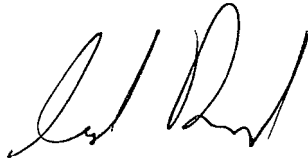
In summary, if the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked pertaining to this individual under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the

service. The city must withhold the date of birth we have marked under section 552.102(a) of the Government Code. The city must withhold dates of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the cellular telephone number we have marked under section 552.1175 if the individual at issue is a licensed peace officer, she elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not provided to the individual at issue at public expense. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining information.²

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 683410

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves); *see also* Gov't Code § 552.137(b). Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.