



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2017

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2017-27821

Dear Ms. Pemberton:

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# 689029 (PIR# W023583).

The City of Killeen (the "city") received a request for the water billing account addresses and all accounts with a specified name, as well as "all supplemental documents supporting the accounts." The city represents it will withhold motor vehicle record information under section 552.130(c) of the Government Code, account numbers under section 552.136(c) of the Government Code, and social security numbers under section 552.147 of the Government Code.¹ The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). 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 under the Act. *See id.* § 552.147(b).

The city informs us some of the submitted information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this information in response to this request.

Section 552.101 of the Government Code excepts “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, 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). 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.). Thus, the city must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find the submitted leases, which we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must also withhold the leases we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.101 of the Government Code also encompasses section 182.052 of the Utilities Code, which provides, in relevant part, the following:

- (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer’s account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer’s volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

²As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

(b) A customer may request confidentiality by delivering to the government-operated utility an appropriately marked form provided under Subsection (c)(3) or any other written request for confidentiality.

Util. Code § 182.052(a)-(b). The scope of utility services covered by section 182.052 includes water, wastewater, sewer, gas, garbage, electricity, or drainage service. *Id.* § 182.051(3). “Personal information” under section 182.052(a) means an individual’s address, telephone number, or social security number, but does not include an individual’s name. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor).

The city asserts some of the remaining information consists of personal information of utility customers who timely requested confidentiality under section 182.052 of the Utilities Code. We also understand the primary source of water for the city’s utility services is not a sole-source designated aquifer. There is also no indication the exceptions listed in section 182.054 apply. Upon review, we agree the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code. However, the remaining information is not confidential under section 182.052(a), and the city may not withhold it under section 552.101 on that ground.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c), and the city does not inform us a member of the public has affirmatively consented to its release. Therefore, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code.

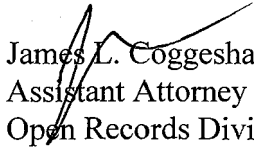
In summary, the city must withhold the following: (1) the submitted dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.101 of the Government Code in conjunction with section 182.052(a) of the Utilities Code; and (3) the information we have marked under section 552.137 of the Government Code. The city must release the remaining responsive 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.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 689029

Enc. Submitted documents

c: Requestor
(w/o enclosures)