



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2019

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
1400 South Lamar Street, 6th Floor, 6W
Dallas, Texas 75215

OR2019-00500

Dear Ms. McClellan:

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# 744674 (D026748-101518).

The Dallas Police Department (the "department") received a request for specified administrative leave records. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹We note, and you acknowledge, the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because the exceptions the department claims can provide compelling reasons to overcome the presumption of openness, we will consider your arguments. *See id.* §§ 552.007, .302, .352.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert the information you have marked is subject to chapter 261 of the Family Code. Upon review, however, we find you have failed to demonstrate the information at issue is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we conclude section 261.201 is not applicable to the information you have marked, and it may not be withheld on that basis.

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. *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. We have marked information under section 552.117 that consists of the personal information of peace officers who were employed by the department and the information is held in the employment context. 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 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. Conversely, to the extent the individuals whose information is at issue are no longer licensed peace officers as defined by article 2.12, then the department may not withhold the marked information under section 552.117(a)(2). Further, we find the remaining information you have marked is not protected by section 552.117(a)(2) and it may not be withheld on that basis.

If the information we have marked under section 552.117 pertains to individuals who are no longer licensed peace officers, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, 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. *See Gov’t Code* § 552.117(a)(1). 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 be withheld under section 552.117(a)(1) only 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals at issue are no longer peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue are no longer peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the department may not withhold the marked information under section 552.117(a)(1). Further, we find the remaining information you have marked is not the type of information protected by section 552.117(a)(1) and it may not be withheld on that basis.

In summary, to the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the individuals at issue are no longer peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the marked information under section 552.117(a)(1) of the Government Code. The department 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,

A handwritten signature in black ink, appearing to read "Katherine Stark". The signature is written in a cursive, flowing style.

Katherine Stark
Attorney
Open Records Division

KS/gw

Ref: ID# 744674

Enc. Submitted documents

c: Requestor
(w/o enclosures)