



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 15, 2019

Mr. Carl R. Allred  
Counsel for the City of Rosenberg  
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Houston, Texas 77024-4494

OR2019-13050

Dear Mr. Allred:

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# 773051.

The City of Rosenberg (the "city"), which you represent, received a request for records that relate to the dismissal or termination of a named individual. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test encompassed by section 552.101 of the Government Code, 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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W. 2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's*

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<sup>1</sup>Although you do not raise section 552.130 in your brief, we understand you to raise this section based on your markings in the submitted information.

interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find the city must withhold the date of birth you marked under section 552.102(a) of the Government Code.<sup>2</sup> However, we find you have failed to demonstrate the applicability of section 552.102(a) to the remaining information, and the city may not withhold any of the remaining information on this 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. You have marked information under section 552.117 that consists of the personal information of a peace officer who was employed by the city and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the city must withhold the information you marked under section 552.117(a)(2) of the Government Code. Conversely, to the extent the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the city may not withhold the marked information under section 552.117(a)(2).

If the information you marked under section 552.117 pertains to an individual who is no longer licensed peace officer, 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 id.* § 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 individual at issue is no longer a peace officer as defined by article 2.12 and

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

to the extent the individual timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue is no longer a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

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 a 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. Upon review, we find the city must withhold the information you marked under section 552.130 of the Government Code.

In summary, the city must withhold the date of birth you marked under section 552.102(a) of the Government Code. To the extent the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information you marked under section 552.117(a)(2) of the Government Code. To the extent the individual at issue is no longer a peace officer as defined by article 2.12 and to the extent the individual timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. The city must withhold the information you 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](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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/sb

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)