



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 17, 2019

Mr. Joseph J. Gorfida, Jr.  
Counsel for the City of Sachse  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 North Akard Street, Suite 1800  
Dallas, Texas 75201

OR2019-13272

Dear Mr. Gorfida:

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# 766121 (Ref. No. 106702).

The City of Sachse (the "city"), which you represent, received a request for information pertaining to a named individual's application for employment with the city. You state the city has released some information to the requestor. You state the city will withhold social security numbers pursuant to section 552.147(b) of the Government Code and dates of birth pursuant to Open Records Letter No. 2018-22059 (2018).<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>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. *See* Gov't Code § 552.147(b). Open Records Letter No. 2018-22059 is a previous determination issued to the city authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

Initially, you indicate some of the submitted information, which you have marked, is not responsive to the present request for information. This ruling does not address the public availability of the non-responsive information, and the city need not release it in response to this request.

Section 552.101 of the Government Code exempts from 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 611.002 of the Health and Safety Code, which provides, in part, as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate, or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(2). Upon review, we find the information you marked consists of mental health records for purposes of section 611.002. Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides, in relevant part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a)(1). You state some of the remaining responsive information constitutes information acquired from a polygraph examination. Upon review, we find portions of the information at issue, which we marked, constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. We have no indication the requestor falls into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the information we marked under section 552.101 of the

Government Code in conjunction with section 1703.306 of the Occupations Code. However, we find the city has failed to demonstrate any of the remaining information at issue consists of information acquired from a polygraph examination. Therefore, the city may not withhold any of the remaining responsive information under section 552.101 of the Government Code on the basis of section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also 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; *see also* Open Records Decision No. 659 at 5. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See generally* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). The doctrine of common-law privacy also protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984).

Upon review, we find portions of the remaining responsive information, which we marked, meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining responsive information under section 552.101 of the Government Code on the basis of common-law privacy.

We note some of the remaining responsive information may be excepted from disclosure under section 552.117 of the Government Code.<sup>2</sup> 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). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is 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 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. Accordingly, if the cellular telephone numbers we marked pertain to city employees who timely requested confidentiality under section 552.024 of the Government Code and the cellular service is not paid for by a governmental body, then the city must withhold the information at issue under section 552.117(a)(1) of the Government Code. If the cellular telephone numbers we marked do not pertain to city employees who timely requested confidentiality under section 552.024 of the Government Code or the cellular service is paid for by a governmental body, then the city may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>3</sup> 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. Upon review, we note the remaining information includes additional motor vehicle record information subject to section 552.130. Accordingly, except for the information we marked for release, the city must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. However, we find the remaining information at issue does not consist of motor vehicle record

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>Section 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).

information subject to section 552.130 of the Government Code. Therefore, the city may not withhold any portion of the remaining responsive information under section 552.130.

You state the city will withhold the e-mail addresses you marked under section 552.137 of the Government Code pursuant to Open Records Decision No. 684.<sup>4</sup> Section 552.137 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). *See id.* § 552.137(a)-(c). Accordingly, with the exception of the information we marked for release, the city must withhold the personal e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. However, we find the remaining information at issue does not consist of e-mail addresses for purposes of section 552.137. Therefore, the city may not withhold any of the remaining responsive information under section 552.137 of the Government Code.

In summary, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the cellular telephone numbers we marked pertain to employees who timely requested confidentiality under section 552.024 of the Government Code and the cellular service is not paid for by a governmental body, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. With the exception of the information we marked for release, the city must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. With the exception of the information we marked for release, the city must withhold the personal e-mail address you marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. 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.

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/>

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<sup>4</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses subject to section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

[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,



Blake Brennan  
Attorney  
Open Records Division

BB/gw

Ref: ID# 766121

Enc. Submitted documents

c: Requestor  
(w/o enclosures)