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ATTORNEY GENERAL OF TEXAS

June 21, 2019

Mr. William Overton
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2019-16973

Dear Mr. Overton:

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# 771621 (OGC# DT0141).

The Texas Department of Criminal Justice (the "department") received a request for all information related to two specified grievances. You claim portions of the submitted information are excepted from disclosure under sections 552.117 and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of 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."² Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) 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 department

¹Although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information held in an employment context.

²The 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).

must withhold the date of birth we have marked under section 552.102(a) of the Government Code.³

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. 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. 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. If the individuals at issue are currently-licensed peace officers as defined by article 2.12, then the department must withhold the remaining information you have marked under section 552.117(a)(2) of the Government Code. Conversely, if the individuals at issue are not currently-licensed police officers as defined by article 2.12, the information at issue may not be withheld under section 552.117(a)(2) of the Government Code.

If the individuals at issue are not currently-licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which 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. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department may only withhold the information at issue under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals at issue are not currently-licensed peace officers and made timely elections under section 552.024, the department must withhold the remaining information you have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals at issue are not currently-licensed peace officers and did not make timely elections under section 552.024, their information may not be withheld under section 552.117(a)(1) of the Government Code.⁴

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code

³As our ruling is dispositive, we need not address your argument against disclosure of this information.

⁴To the extent the marked social security numbers are not excepted from disclosure under section 552.117 of the Government Code, we note 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. Gov't Code § 552.147(b).

§ 552.136(b); *see id.* § 552.136(a) (defining “access device”). You explain the employee identification numbers you have marked are used to access government accounts and criminal databases. Thus, the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the date of birth we have marked under section 552.102(a) of the Government Code. If the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12, then the department must withhold the remaining information you have marked under section 552.117(a)(2) of the Government Code. If the individuals at issue are not currently-licensed peace officers and made timely elections under section 552.024 of the Government Code, the department must withhold the remaining information you have marked under section 552.117(a)(1) of the Government Code. The department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code. The department must release the remaining information to this requestor.⁵

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/be

⁵We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

Ref: ID# 771621

Enc. Submitted documents

c: Requestor
(w/o enclosures)