



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 28, 2019

Ms. Eileen M. Hayman  
Counsel for the City of Breckenridge  
Messer, Rockefeller & Fort, P.L.L.C.  
500 Chestnut Street, Suite 1601  
Abilene, Texas 79602

OR2019-17907

Dear Ms. Hayman:

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# 772877.

The City of Breckenridge (the "city"), which you represent, received two requests from the same requestor for information pertaining to fourteen named individuals. You state the city does not have information responsive to part of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107(2) of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as the following:

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officers' TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the officers' TCOLE numbers are not subject to the Act, and the city need not release them to the requestor.

Next, you argue the remaining information is protected by section 552.107(2) of the Government Code, which provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). You submitted a copy of a court order signed by Judge Stephen Bristow, District Judge for the 90th Judicial District Court in Stephens County, Texas, in a case styled *The State of Texas v. Paxton Lee Sullivan*. The court order provides, in part, from the date the order was issued until the discharge of the trial jurors in the case, attorneys representing the State of Texas and the defendant, and "all prospective witnesses, including all law enforcement personnel, . . . from making and participating in making any extrajudicial statements . . . that relate to" specified matters. Order at 1, *State of Texas v. Sullivan* (90th Dist. Ct., Stephens Co., Tex., December 20, 2018). You assert the gag order prevents disclosure of the remaining information. We note, however, the gag order forbids statements by certain individuals but does not prohibit disclosure of any information. Thus, upon review, we conclude you failed to establish the gag order makes the remaining information confidential or prohibits the city from releasing any of the

remaining information. Therefore, we find the city may not withhold the remaining information under section 552.107(2) of the Government Code.

We now address your arguments under section 552.103 of the Government Code. Section 552.103 provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, a lawsuit styled *State v. Paxton Lee Sullivan*, was pending in the 90th Judicial District Court of Stephens County, Texas, when the city received the instant request for information. You state the submitted information is related to the pending lawsuit. We note, however, the city is not a party to the pending case and, thus, does not have a litigation interest in the matter for purposes of section 552.103. See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (statutory predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation we require an affirmative representation from the governmental body with the litigation interest that it wants the information at issue withheld from disclosure under section 552.103. In this case, you failed to provide us with any such representation. Therefore, you failed to demonstrate the applicability of section 552.103 of the Government Code to the submitted information, and the city thus may not withhold the information on that basis.

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.”<sup>2</sup> 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 city must withhold all employee dates of birth under section 552.102(a) of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code. 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. Upon review, we find some of the remaining information, which we marked, may be subject to section 552.117(a)(2). We note the individuals whose information is at issue may be currently licensed peace officers as defined by article 2.12. Accordingly, to the extent the information we marked pertains to individuals who are currently licensed peace officers as defined by article 2.12, the city must withhold the information under section 552.117(a)(2) of the Government Code. Conversely, if the information we marked pertains to individuals who are not currently licensed peace 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 information we marked under section 552.117 pertains to individuals who are not currently licensed peace officers, then the information at issue 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. Therefore, to the extent the individuals whose information is at issue are not currently licensed 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 city must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue are not currently licensed peace officers as

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

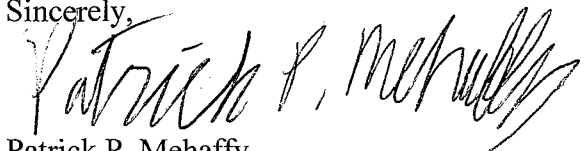
defined by article 2.12 and did not timely request confidentiality under section 552.024, the city may not withhold the information at issue under section 552.117(a)(1).<sup>3</sup>

In summary, the officers' TCOLE numbers are not subject to the Act and need not be released to the requestor. The city must withhold all employee dates of birth under section 552.102(a) of the Government Code. To the extent the information we marked pertains to individuals who are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information under section 552.117(a)(2) of the Government Code. To the extent the individuals whose information is at issue are not currently licensed 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 city must withhold the information we marked under section 552.117(a)(1) 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,



Patrick P. Mehaffy  
Assistant Attorney General  
Open Records Division

PPM/gw

Ref: ID# 772877

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Regardless of the applicability of 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. *See* Gov't Code § 552.147(b).