



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2019

Ms. Mary Kay Fischer
City Attorney
City of Friendswood
910 South Friendswood Drive
Friendswood, Texas 77546

OR2019-18221

Dear Ms. Fischer:

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# 773102 (ORR# W010917-041219).

The City of Friendswood (the "city") received a request for specified information pertaining to a named employee. The city states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.152 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 or section 552.1175 of the Government Code.¹ Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.² However, section 552.117 is not applicable to the remaining information, and the city may not withhold any of it on that ground.

¹"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

²As our ruling is dispositive, we do not address the other arguments of the city to withhold this information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 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 the *Industrial Foundation* decision. *Id.* at 683. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. None of the remaining information is subject to section 552.1175 of the Government Code. Accordingly, the city may not withhold any of the remaining information on that basis.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

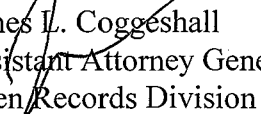
Id. § 552.152. The city represents release of the information it has marked would subject an officer to a substantial threat of physical harm. Upon review, we find the city has demonstrated release of the information at issue would subject the officer to a substantial threat of physical harm. Therefore, the city must withhold the information it has marked under section 552.152 of the Government Code.

In summary, the city must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.117(a)(2) of the Government Code; and (3) the information it has marked under section 552.152 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, 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 773102

Enc. Submitted documents

c: Requestor
(w/o enclosures)