



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Mr. Daniel D. Jones
City Attorney
City of Fredericksburg
126 West Main Street
Fredericksburg, Texas 78624-3708

OR2019-18370A

Dear Mr. Jones:

This office issued a letter to the Fredericksburg Police Department (the “department”) for ID# 773736 on July 8, 2019. Since that time, we have received new information that affects the facts on which this letter was based. Consequently, this decision serves as the correct ruling and is a substitute for the letter issued on July 8, 2019. *See generally* Gov’t Code §552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the “Act”)). Your request was assigned ID# 789936.

The department received a request for a specified internal affairs investigation. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have also received comments from the requestor. *See* Gov’t Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor asserts the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See id.* § 552.301(d)(1) (requiring governmental body to provide requestor written statement the governmental body has asked for an attorney general decision), (e) (requiring governmental body to submit within fifteen business days of receiving request for information copy of request for information). However, we note sections 552.101 and 552.117 of the Government Code provide compelling reasons sufficient to overcome the presumption of openness caused by the failure to comply with section 552.301. *See id.* §§ 552.007, .302. Therefore, we will address the applicability of these exceptions to the submitted 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 *Industrial Foundation*. *Id.* at 683. This office has also found common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b). Upon review, we find the information we indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You state the department does not have the technological ability to redact the indicated information from the submitted video recordings. Accordingly, the department must withhold the submitted video recordings in their entireties under section 552.101 of the Government Code in conjunction with common-law privacy. Further, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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 submitted information, which we marked, may be subject to section 552.117(a)(2). We note the individual whose information is at issue may be a currently licensed peace officer as defined by article 2.12. Accordingly, to the extent the information we marked pertains to an individual who is a currently licensed peace officer as defined by article 2.12, the department must withhold the information under section 552.117(a)(2) of the Government Code. Conversely, if the information we marked pertains to an individual who is not a currently licensed peace officer 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 an individual who is not a currently licensed peace officer, 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 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. Therefore, to the extent the individual whose information is at issue is not a currently licensed peace officer as defined by article 2.12, and to the extent this individual timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue is not currently licensed peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the department may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

In summary, the department must withhold the submitted video recordings in their entirety and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we marked pertains to an individual who is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. To the extent the individual whose information is at issue is not a currently licensed peace officer as defined by article 2.12, and to the extent this individual timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. The department 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,


Kelly McWethy
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)