



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2019

Ms. Leticia Brysch
City Clerk/Public Information Coordinator
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2019-24390

Dear Ms. Brysch:

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# 783415 (PIR# 14,785).

The City of Baytown (the "city") received a request for information from a named individual's personnel file. You state you have released some information to the requestor. You state you will withhold certain information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.137, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As noted above, you state you will withhold some information under section 552.101 of the Government Code in conjunction with 26 U.S.C. § 6103(a) and section 552.140 of the Government Code pursuant to Open Records Decision No. 684. We understand you to claim you will withhold some of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy pursuant to Open Records

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including W-4 forms under section 552.101 of the Government Code in conjunction with 26 U.S.C. § 6103(a) and a military discharge record under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.

Decision No. 684. However, we note the information at issue is not the type of information that was at issue in Open Records Decision No. 684; thus, the city may not withhold this information pursuant to Open Records Decision No. 684 without asking for an attorney general decision. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of a particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Further, this office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we conclude some of the information you have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information at issue is not highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

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 or official 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. The submitted information includes an election by the named employee to withhold certain personal information. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked, along with the additional information we have marked to withhold, under section 552.117(a)(1) of the Government Code. However, upon review, we find you have failed to demonstrate the applicability of section 552.117(a)(1) to the information we have marked for release. Consequently, the city may not withhold this information under section 552.117(a)(1) of the Government Code.

After reviewing the remaining information, we have determined no novel or complex issue exists in the information at issue. Thus, we address the public applicability of the remaining information in a summary ruling.

The city must withhold the employee's date of birth we have marked under section 552.102(a) of the Government Code.² The city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The city must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release. The city must release the remaining information.³

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.

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.*

³We note the remaining information includes the named individual's social security number. 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).*

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,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/mo

Ref: ID# 783415

Enc. Submitted documents

c: Requestor
(w/o enclosures)