



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2019

Mr. Eric C. Farrar
Counsel for City of La Marque
Olson & Olson, L.L.P.
2727 Allen Parkway
Houston, Texas 77019-2133

OR2019-27300

Dear Mr. Farrar:

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# 788726 (LaMarque19-003).

The City of La Marque (the "city"), which you represent, received a request for information pertaining to specified investigations of or complaints against members of the City of La Marque Fire Department during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

- (a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:
 - (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information is part of a completed investigation subject to section 552.022(a)(1). The city must release the information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. Although the city raises section 552.103 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under section 552.103. However, sections 552.101 and 552.117 of the Government Code make information confidential under the Act.¹ Therefore, we will address the applicability of these exceptions to the information at issue.

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. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing information and not of legitimate public interest. Thus, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(16) of the Government Code may be applicable to some of the submitted information. Section 552.117(a)(16) of the Government Code excepts from

¹ 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).

public disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a firefighter, volunteer firefighter, or emergency medical services personnel as defined by section 773.003 of the Health and Safety Code, regardless of whether the firefighter, volunteer firefighter, or emergency medical services personnel comply with section 552.024 or section 552.1175 of the Government Code. Act of May 27, 2019, 86th Leg., R.S., H.B. 2446, § 4 (to be codified at Gov't Code § 552.117(a)(16)). In this instance, it is unclear whether some of the individuals at issue are currently firefighters, volunteer firefighters, or emergency medical services personnel. Accordingly, to the extent the individuals at issue are currently firefighters, volunteer firefighters, or emergency medical services personnel as defined by section 773.003 of the Health and Safety Code, the city must withhold the information we marked under section 552.117(a)(16) of the Government Code. Conversely, to the extent the individuals at issue are no longer firefighters, volunteer firefighters, or emergency medical services personnel as defined by section 773.003 of the Health and Safety Code, the city may not withhold the marked information under section 552.117(a)(16).

If the information we marked under section 552.117 pertains to an individual who is no longer a firefighter, volunteer firefighter, or emergency medical services personnel, 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees at issue 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 employees at issue did not timely request confidentiality under section 552.024, the city may not withhold the information under section 552.117(a)(1) of the Government Code.

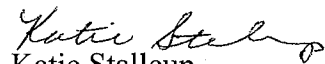
In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we marked pertains to individuals who are currently firefighters, volunteer firefighters, or emergency medical services personnel as defined by section 773.003 of the Health and Safety Code, the city must withhold the marked information under section 552.117(a)(16) of the Government Code. To the extent the individuals whose information is at issue are not currently firefighters, volunteer firefighters, or emergency medical services personnel as defined by section 773.003 of the Health and Safety 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 <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,


Katie Stallcup
Attorney
Open Records Division

AKS/eb

Ref: ID# 788726

Enc. Submitted documents

c: Requestor
(w/o enclosures)