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ATTORNEY GENERAL OF TEXAS

October 16, 2019

Mr. Mason Spiller
Counsel for the City of Jacksboro
Spiller & Spiller
P.O. Drawer 447
Jacksboro, Texas 76458

OR2019-28989

Dear Mr. Spiller:

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# 791715.

The City of Jacksboro (the "city"), which you represent, received a request for information pertaining to a named former employee. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed 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." 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 the *Industrial Foundation* decision. *Id.* at 683. 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).

The city cites to *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), in support of its argument under common-law privacy for the remaining information. In the *Ellen* decision, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of sexual harassment. Upon review, we find the information at issue does not constitute a sexual harassment investigation for purposes of the *Ellen* decision. Therefore, the common-law privacy protection under the *Ellen* decision is not applicable to the remaining information. We also find none of the submitted information otherwise satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the submitted information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.117 of the Government Code may be applicable to some of the submitted information.¹ Section 552.117(a)(2) 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.² Gov't Code § 552.117(a)(2). It is unclear whether the former employee at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the former employee is a currently licensed peace officer as defined by article 2.12. If the employee is not a currently licensed peace officer as defined by article 2.12, then the city may not withhold this information under section 552.117(a)(2).

Nevertheless, if the employee is not currently a 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* 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 who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employee is not a currently licensed peace officer as defined by

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

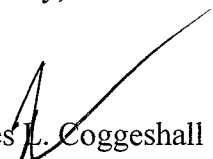
² "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information at issue under section 552.117(a)(1) of the Government Code. To the extent the former employee is not a currently licensed as a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the city may not withhold the information at issue under section 552.117(a)(1). 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 791715

Enc. Submitted documents

c: Requestor
(w/o enclosures)