



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2019

Ms. Julie P. Doshier
Counsel for the City of Allen
Nichols, Jackson, Dillard, Hager & Smith
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2019-30974

Dear Ms. Doshier:

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# 795000 (File No. #110484).

The City of Allen (the "city"), which you represent, received a request for records related to Ring, L.L.C. ("Ring"), including any contract between the Allen Police Department (the "department") and Ring, communications between the department and Ring during a specified period, and requests sent to Ring for video recordings from Ring devices. The city states it is releasing some of the requested information. The city states it will redact information pursuant to Open Records Decision No. 684 (2009).¹ The city also states it will withhold information subject to section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001).² The city further states it is withholding access device numbers pursuant to section 552.136(c) of the Government Code.³ The city claims

¹ Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including the e-mail addresses of private citizens who have not provided affirmative consent for release under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

² A governmental body may withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* ORD 670; Gov't Code § 552.147(b).

³ Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.*

some of the submitted information is excepted from disclosure under section 552.152 of the Government Code.⁴ Additionally, the city states release of the submitted information may implicate the proprietary interests of Ring. Accordingly, the city states, and provides documentation showing, it notified Ring of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d)*; *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We received comments from Ring. We have also received and considered 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 reviewed the submitted arguments and the submitted information.

Initially, we note some of the requested information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-24727 (2019). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the city must rely on Open Records Letter No. 2019-24727 as a previous determination and release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider the submitted arguments.

Section 552.101 of the Government Code excepts “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. However, the names, addresses, and telephone numbers of members of the public are not excepted from

§ 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See Gov't Code § 552.136(d), (e)*.

⁴ Although you state the city will withhold certain information under section 552.152 of the Government Code pursuant to Open Records Letter No. 2019-09287 (2019), we note that decision is not a previous determination that would allow the city to withhold information subject to section 552.152 of the Government Code without first seeking a ruling from this office.

public disclosure under common-law privacy. See Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). We understand Ring to argue some of the information at issue is confidential under common-law privacy. However, upon review, we find no portion of the submitted information is highly intimate or embarrassing and not of legitimate concern to the public. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

Ring also raises section 552.102(a) of the Government Code for some of the information at issue. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). We understand Ring to assert the privacy analysis under section 552.102(a) is the same as the two-part common-law privacy test under section 552.101 of the Government Code, which is discussed above. *Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. See *id.* at 348. Upon review, we find the submitted information does not contain information protected under section 552.102(a) of the Government Code. Accordingly, no portion of the submitted information may be withheld on that basis.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] 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.

Gov't Code § 552.152. The city represents the release of the undercover police officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the city must withhold the identifying information of the undercover officers under section 552.152 of the Government Code.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the city must rely on Open Records Letter No. 2019-24727 as a previous determination and release the identical information in accordance with that ruling. The city must withhold the identifying information of the

undercover officers under section 552.152 of the Government Code. The remaining information must be released.

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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 795000.

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)