



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 5, 2019

Ms. Alicia K. Kreh  
Counsel for the City of Southlake  
Taylor Olson Adkins Sralla Elam  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2019-31200

Dear Ms. Kreh:

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# 792685 (Ref. No. W001825).

The City of Southlake (the "city"), which you represent, received a request for certain employment records of a former city police officer. You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers under section 552.147(b) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is not responsive to the request. In the alternative, you claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.136 of the Government Code.<sup>2</sup> We have considered your arguments and reviewed the submitted information.

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

<sup>2</sup> Although you do not cite to sections 552.117, 552.1175, and 552.136 of the Government Code in your brief, we understand the city to raise these exceptions based on your markings. Further, although you initially raised sections 552.103, 552.107, 552.108, 552.111, 552.122, and 552.152 of the Government Code, you have not provided any arguments to support these exceptions. Therefore, we assume the city has withdrawn its claim these sections apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

Initially, you argue the submitted information is not responsive to the request for information. A governmental body must make a good faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8 (1990). The submitted information is within the possession and control of the city and relates to the request for information. Therefore, we find all of the documents you submitted are responsive to the request and we will address your claimed exceptions for the entirety of the submitted information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review, we find the information we marked constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations

Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses 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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied). (mem. op.). 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992), 545 (1990), 523 (1989), 373 (1983). Upon review, we find some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold all public citizens' dates of birth and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup>

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 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. In this instance, we are unable to determine whether the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12; therefore, we must rule conditionally. If the individuals whose information you marked and we marked and indicated are currently-licensed peace officers, the city must withhold the information at issue under section 552.117(a)(2) of the Government Code.

If the individuals whose information is at issue are not currently licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, 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. *See id.* § 552.117(a)(1). We note the protections of section 552.117 only apply to information that the governmental body holds in its capacity

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<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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as an employer. *See id.* § 552.117(a)(1) (providing employees of governmental entities may protect certain personal information in the hands of their employer); ORD 455. 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). Therefore, the city may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made. Upon review, we conclude, if the individuals whose information is at issue are not currently-licensed peace officers but they timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information you marked and we marked and indicated under section 552.117(a)(1) of the Government Code.

Some of the remaining information, which we marked, may relate to an individual who is a currently licensed peace officer of another law enforcement agency. Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). We note section 552.1175 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988). Thus, if the individual whose cellular telephone number is at issue is a currently-licensed peace officer, and if this individual elected to restrict access to his information in accordance with section 552.1175(b) of the Government Code, then the city must withhold the cellular telephone number we marked under section 552.1175 of the Government Code, provided a governmental body does not pay for the cellular telephone service.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The city must withhold the account number you marked and we marked under section 552.136 of the Government Code.

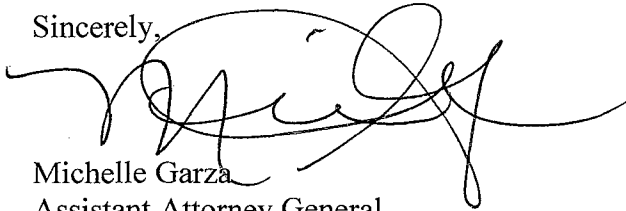
In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The city must withhold all public citizens' dates of birth and the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information you marked and we marked and indicated are currently-licensed peace officers, the city must withhold the marked information under section 552.117(a)(2) of the Government Code. If these individuals are not currently-licensed peace officers but they timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information you marked and we marked and indicated under section 552.117(a)(1) of the Government Code. If the individual whose cellular telephone number we marked is a currently licensed peace officer,

and if this individual elected to restrict access to his information in accordance with section 552.1175(b) of the Government Code, then the city must withhold the cellular telephone number we marked under section 552.1175 of the Government Code, provided a governmental body does not pay for the cellular telephone service. The city must withhold the account number you marked and we marked under section 552.136 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,

A handwritten signature in black ink, appearing to read "Michelle Garza", written over a horizontal line.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MRG/mo

Ref: ID# 792685

Enc. Submitted documents

c: Requestor  
(w/o enclosures)