



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

December 12, 2019

Ms. Annette Villarreal  
City Secretary  
City of Palmview  
400 West Veteran's Boulevard  
Palmview, Texas 78572-8372

OR2019-35136

Dear Ms. Villarreal:

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# 801403.

The City of Palmview (the "city") received two requests from the same requestor for the personnel records of a named former employee. The city states it has released some of the requested information, but 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. Additionally, this office has concluded some kinds of medical

information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). But 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). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>1</sup> However, the remaining 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(a)(1) of the Government Code may be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. The city must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the former employee at issue timely elected to withhold that information.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the information we have marked under section 552.117(a)(1) of the Government Code if the former employee at issue timely elected to withhold that information. 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.

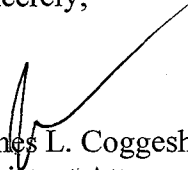
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

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<sup>1</sup> As our ruling is dispositive, we do not address the other arguments of the city to withhold this information.

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/rm

Ref: ID# 801403

Enc. Submitted documents

c: Requestor  
(w/o enclosures)