



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 3, 2020

Ms. LeAnn M. Quinn  
City Secretary  
City of Cedar Park  
450 Cypress Creek Road  
Cedar Park, Texas 78613

OR2020-00262

Dear Ms. Quinn:

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# 804261 (CS 19-375).

The City of Cedar Park (the "city") received a request for information pertaining to specified investigations.<sup>1</sup> We understand you have released some information. You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.139 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

The Act applies to "public information," which is defined in section 552.002 of the Government Code. Section 552.002 provides, in pertinent part:

---

<sup>1</sup> We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

<sup>2</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) In this chapter, “public information” means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Gov’t Code § 552.002(a). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). We note the information at issue consists of computer code for certain software programs. In Open Records Decision No. 581 (1990), this office determined that certain computer information such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information that is made public under section 552.021 of the Act. Open Records Decision No. 581 (1990) (construing predecessor statute). You state the computer code at issue functions solely as a tool to maintain, manipulate, or protect public property and has no independent relevance. *Id.* at 6. Based on your representation and our review, we find this information is not public information as defined by section 552.002 of the Government Code. Accordingly, we conclude the information you marked is not subject to the Act and need not be released in response to the instant request.<sup>3</sup>

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. This section encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related

---

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

to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

We note Exhibit F contains images of individuals, who all appear to be adults, in various states of undress, some of whom are identifiable and others who are not. For the images that depict identifiable unclothed individuals, we find that, if these pictures were obtained from publicly available websites, the individuals depicted are not afforded protection under constitutional privacy. If the city determines these images are in the public domain, we believe the individuals depicted have no reasonable expectation of privacy and the city must release the information. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain); *Roberts v. Houston Indep. Sch. Dist.*, 788 S.W.2d 107, 111 (Tex. App.—Houston [1st Dist.] 1990). However, should the city determine the identifiable images were not obtained from publicly available websites, we find the images of the identifiable individuals who are partially or completely unclothed are excepted from disclosure under section 552.101 of the Government Code based on the constitutional right to privacy and the city must withhold the images on that basis. In either instance, the city may not withhold the images of the unidentifiable individuals under section 552.101 in conjunction with constitutional privacy.

Section 552.101 of the Government Code also 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, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See Open Records Decision Nos. 444 at 5-6* (1986) (public has interest in public employee's qualifications and performance and the circumstances of public employee's resignation or termination), 423 at 2 (1984). Upon review, we find you have failed to demonstrate the information you seek to withhold is highly intimate or embarrassing information and of no legitimate public interest. Therefore, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.139 of the Government Code provides, in part:

- (a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted

information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Gov't Code § 552.139(a). Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

(1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency[.]

*Id.* § 2059.055(b). You state the information you marked under section 552.139 consists of specific addressing and server information and network resource information that would potentially create a security breach for the city's entire network and information services. Based on your representations and our review, we agree the city must withhold the city IP address you marked under section 552.139(a) of the Government Code. However, we find you have not demonstrated the applicability of section 552.139 to the remaining responsive information at issue. Consequently, the city may not withhold this information under section 552.139 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 or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). 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 or official 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. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to 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; however, the cellular telephone numbers may only be withheld if a governmental body does not pay for the cellular telephone service. However, we find the city failed to demonstrate the applicability of section 552.117(a)(1) to the remaining information at issue. Therefore, the city may not withhold any portion of the remaining information under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>4</sup> *See id.* § 552.137(a)-(c). The e-mail address at issue is not within the scope of section 552.137(c). Accordingly, the city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release.

In summary, the information you marked is not subject to the Act and need not be released in response to the instant request. To the extent the images in Exhibit F were not obtained from publicly available websites, the city must withhold the images of the living, identifiable individuals who are partially or completely unclothed under section 552.101 of the Government Code based on the constitutional right to privacy. The city must withhold the city IP address you marked under section 552.139(a) of the Government Code. To the extent the individual whose information is at issue timely requested confidentiality pursuant to 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; however, the cellular telephone numbers may only be withheld if a governmental body does not pay for the cellular telephone service. The city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. 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,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/gw

---

<sup>4</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 804261

Enc. Submitted documents

c: Requestor  
(w/o enclosures)