



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 29, 2020

Mr. Eric C. Farrar
Counsel for the City of Humble
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2020-02733

Dear Mr. Farrar:

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# 809157 (ORR# COHM19-032).

The Humble Police Department (the "department"), which you represent, received a request for information related to the termination of a named former department officer.¹ The department states it is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code, access device numbers pursuant to section 552.136(c) of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.² The department further states it is withholding certain information

¹ The department states it 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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² 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 552.136(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.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(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).

pursuant to Open Records Decision No. 684 (2009).³ The department states it is releasing some of the requested information. The department claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the department claims and reviewed the submitted information.

Initially, we note the submitted information contains a peace officer's commission identification number.⁴ Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body; for a governmental body and the governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or 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). In Open Records Decision No. 581 (1990), this office determined 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 made public under section 552.021 of the Government Code. ORD 581 at 5. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the commission's website. Accordingly, we find the officer's commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification number is not subject to the Act and the department is not required to release it to the requestor.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

The department states the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and

³ 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.

⁴ The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01.

our review, we agree section 552.108(a)(2) is applicable to incident number 19-0614-0007. However, the remaining information at issue is not information that deals with the detection, investigation, or prosecution of crime. Thus, we find the department has failed to demonstrate the applicability of section 552.108(a)(2) to any portion of the remaining information at issue, and the department may not withhold the remaining information on that basis.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold incident number 19-0614-0007 under section 552.108(a)(2) of the Government Code.

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 exception encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The department states the remaining information was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The information demonstrates the information relates to an officer who was dishonorably discharged. However, we are unable to determine whether the officer at issue was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Accordingly, we must rule in the alternative. If the officer at issue was terminated for reasons other than substantiated incidents of excessive force or violations of the law other than traffic offenses, then the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. Conversely, if the officer at issue was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, then the information is not confidential under section 1701.454 of the Occupations Code and the department may not withhold it under section 552.101 of the Government Code on that basis. Accordingly, in that instance we will consider additional exceptions to disclosure of this information.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”⁵ Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the department must withhold the employee’s date of birth we marked under section 552.102(a) of the Government Code.⁶

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 sections 552.024 and 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. We note a post office box number is not a “home address” for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 552.117 is to protect public employees from being harassed at home). We have marked information under section 552.117 that consists of the personal information of a peace officer who was employed by the department and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, then the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the department may not withhold the marked information under section 552.117(a)(2).

If the information we marked under section 552.117 pertains to an individual who is no longer a licensed peace officer, then the marked information 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

⁵ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁶ As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

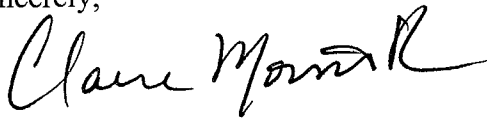
552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual at issue is no longer a peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code, then the department must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue is no longer a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the department may not withhold the marked information under section 552.117(a)(1).

In summary, the commission identification number is not subject to the Act and the department is not required to release it to the requestor. With the exception of the basic information, which must be released, the department may withhold incident number 19-0614-0007 under section 552.108(a)(2) of the Government Code. If the officer at issue was terminated for reasons other than substantiated incidents of excessive force or violations of the law other than traffic offenses, then the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. If the officer at issue was terminated for substantiated incidents of excessive force or violations of the law other than traffic offenses, then the department (1) must withhold the employee's date of birth we marked under section 552.102(a) of the Government Code; (2) must withhold the information we marked under section 552.117(a)(2) of the Government Code, if the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure; (3) must withhold the information we marked under section 552.117(a)(1) of the Government Code if the individual at issue is no longer a peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code; and (4) 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Mr. Eric C. Farrar - Page 6

Ref: ID# 809157

Enc. Submitted documents

c: Requestor
(w/o enclosures)