



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2020

Mr. Gary W. Smith
City Attorney
City of Richmond
402 Morton Street
Richmond, Texas 77469

OR2020-07112

Dear Mr. Smith:

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# 815119.

The City of Richmond (the "city") received a request for specified records pertaining to a named employee. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.115, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order.¹ *See* Gov't Code § 552.140(a), (b). You do not inform us, and we are unable to determine, when the city first came into possession of the submitted DD-214 form. Therefore, we must rule conditionally. If the city came into possession of the form on or after September 1, 2003, then the city must withhold the submitted DD-214 form under section 552.140 of the Government Code. If the city received the form before September 1, 2003, then the city may not withhold the form pursuant to section 552.140 of the Government Code.

¹ 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).

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.” *Id.* § 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). Upon review, we find the city must withhold the date of birth you marked under section 552.102(a) of the Government Code.

The city also raises section 552.101 of the Government Code in conjunction with the section 69.20 of the Wisconsin Statutes. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. However, section 552.101 does not incorporate the confidentiality provisions of other states’ statutes and regulations because those laws only govern the disclosure of information held by entities of those states. *But see* Open Records Decision No. 561 at 6-7 (1990) (noting that if agency of federal government shares its information Texas governmental entity, Texas entity must withhold information that federal agency determined to be confidential under federal law). Accordingly, the city may not withhold any of the city’s information under section 552.101 of the Government Code on the basis of Wisconsin state law.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as encompassing “a taxpayer's identity, the nature, source, or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax . . . penalty . . . or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d* in part, 993 F.2d 1111 (4th Cir. 1993). However, we find the city has failed to demonstrate the applicability of section 6103(a) of title 26 of the United States Code to any of the remaining information. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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. 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* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Upon review, we find some of the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.² However, we find the city has failed to demonstrate the information we marked for release is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city may not withhold the information we marked for release under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.115 excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). Because section 552.115 of the Government Code does not apply to information held by the city, the city may not withhold the remaining information you marked on this basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.³ Gov’t Code § 552.117(a)(2). 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). Upon review, with the

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

³ Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

exception of the information we marked for release, we find the city must withhold the information you marked under section 552.117(a)(2) of the Government Code.⁴ However, we find the information we marked for release does not constitute the home address, home telephone number, emergency contact information, social security number, or family member information of a peace officer. Accordingly, the city may not withhold any of the information we marked for release under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. *Id.* § 552.130(a)(1), (2). Accordingly, the city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, if the city came into possession of the form on or after September 1, 2003, then the city must withhold the submitted DD-214 form under section 552.140 of the Government Code. The city must withhold the date of birth you marked under section 552.102(a) of the Government Code. With the exception of the information we marked for release, the city must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the city must withhold the information it marked under section 552.117(a)(2) of the Government Code. The city must withhold the motor vehicle record information it marked under section 552.130 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Ref: ID# 815119

Enc. Submitted documents

c: Requestor
(w/o enclosures)