



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 27, 2020

Ms. Janese Dudash  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3rd Floor  
Fort Worth, Texas 76102-6311

OR2020-14712

Dear Ms. Dudash:

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# 830890 (ORR# W099490).

The City of Fort Worth (the "city") received a request for a specified internal affairs report. 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. This section encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI

generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Upon review, we find some of the information at issue, which we have marked, is confidential under section 411.083. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, the remaining information does not contain CHRI for purposes of chapter 411. Accordingly, the remaining information is not confidential under chapter 411, and the city may not withhold it under section 552.101 of the Government Code on that ground.

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[.]” Gov’t Code § 552.102(a). The Texas Supreme Court has 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). The department must withhold the submitted date of under section 552.102(a) of the Government Code.<sup>1</sup>

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. *See* Gov’t Code § 552.140(a), (b). The remaining information includes a DD-214 form that the city appears to have obtained after September 1, 2003. Therefore, the city must withhold the submitted DD-214 form under section 552.140 of the Government Code.

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 the *Industrial Foundation* decision. *Id.* at 683. This office has found information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we find some of the remaining 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.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has

---

<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

family members, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.<sup>2</sup> Gov't Code § 552.117(a)(2). The remaining information contains the social security number of an employee who may be currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the submitted social security number under section 552.117(a)(2) of the Government Code if the employee at issue is a currently licensed peace officer as defined by article 2.12. If the employee is not a currently licensed peace officer as defined by article 2.12, then the city may not withhold this information under section 552.117(a)(2).

Nevertheless, if the employee is not currently a licensed peace officer, then the information at issue 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 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 employee is not a currently licensed peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the submitted social security under section 552.117(a)(1) of the Government Code. To the extent the former employee is not a currently licensed as a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the city may not withhold the social security number under section 552.117(a)(1).<sup>3</sup>

In summary, the city must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and common-law privacy; (2) the submitted date of birth under section 552.102(a) of the Government Code; and (3) the submitted DD-214 form under section 552.140 of the Government Code. The city must also withhold the submitted social security number under section 552.117(a)(2) of the Government Code if the employee at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure; however, if the employee is not a currently licensed peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the

---

<sup>2</sup> "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

<sup>3</sup> To the extent the former employee's social security number is not excepted from disclosure under section 552.117(a)(1), we note 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 under the Act. Gov't Code § 552.147(b).

Government Code, then the city must withhold the information at issue under section 552.117(a)(1) 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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/rm

Ref: ID# 830890

Enc. Submitted documents

c: Requestor  
(w/o enclosures)