



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2020

Mr. Nicholas Toulet
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702

OR2020-18337

Dear Mr. Toulet:

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# 837462 (ORR# M030177).

The City of Midland (the "city") received a request for records related to a named individual. The city states it is releasing some of the requested information. The city claims some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ 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 *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an

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).

individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information). Upon review, we find some of the submitted information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

Section 552.117(a)(1) of the Government Code 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* Gov't Code § 552.117(a)(1). The city informs us the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. Accordingly, the city must generally withhold the information we marked under section 552.117(a)(1) of the Government Code.

We note the requestor is an investigator with the Office of the Inspector General of the Texas Health and Human Services Commission. Accordingly, the city has the discretion to release the information at issue pursuant to an intergovernmental transfer. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. Thus, pursuant to the intergovernmental transfer doctrine, the city has the discretion to release the submitted information that is subject to sections 552.101 and 552.117 of the Government Code to this requestor.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy, must withhold the information we marked under section 552.117(a)(1) of the Government Code, and must release the remaining information; however, if the city chooses to exercise its discretion under the interagency transfer doctrine, then the city may release the entirety of the submitted information to this requestor.

² As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

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/gw

Ref: ID# 837462

Enc. Submitted documents

c: Requestor
(w/o enclosures)