



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2020

Ms. P. Armstrong
Assistant City Attorney
City of Dallas
Criminal Law and Police Section
1400 South Lamar, 6th Floor, 6W
Dallas, Texas 75215

OR2020-29764

Dear Ms. Armstrong:

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# 856182 (ORR# D013947-062220).

The Dallas Police Department (the "department") received a request for a specified internal affairs investigation file. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.152 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

¹ 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.

Gov't Code § 552.152. You inform us the submitted information identifies undercover police officers. You assert release of their identities would subject them to substantial threats of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the department must withhold the identifying information of the undercover officers you marked and indicated under section 552.152 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand the employee identification numbers the department marked are used in conjunction with one additional digit to access the department employees’ credit union bank accounts. Accordingly, the department must withhold the employee identification numbers you marked under section 552.136 of the Government Code.

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 id.* § 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. You have marked information under section 552.117 that consists of the personal information of individuals who were employed by the department and the information is held in the employment context. In this instance, however, it is unclear whether the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12, the department must withhold the information you marked under section 552.117(a)(2) of the Government Code. Conversely, if the individuals whose information is at issue are not currently-licensed peace officers as defined by article 2.12, the information you marked may not be withheld under section 552.117(a)(2).

If the individuals whose information is at issue are not currently-licensed peace officers, then the marked information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individuals whose information is at

issue are not currently-licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure and timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information you marked under section 552.117(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier confidential. *Id.* at 2. Section 772.218 applies to an emergency communication district for a county with a population of more than 1.5 million. We understand the department is located in an emergency communication district subject to section 772.218. Accordingly, to the extent the telephone number you marked consists of an originating telephone number provided by a service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, if the information at issue is not an originating telephone number supplied by a 9-1-1 service supplier, then the department may not withhold this information under section 552.101 on the basis of section 772.218.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Accordingly, the department must withhold the public citizen’s date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold the identifying information of the undercover officers you marked and indicated under section 552.152 of the Government Code. The department must withhold the employee identification numbers you marked under section 552.136 of the Government Code. To the extent the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information you marked under section 552.117(a)(2) of the Government Code. To the extent the individuals whose information we marked are not currently-licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, but timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information you marked under section 552.117(a)(1) of the Government Code. To the extent the telephone number you

marked consists of an originating telephone number provided by a service supplier, the department must withhold this information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The department must withhold the public citizen's date of birth you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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 M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 856182

Enc. Submitted documents

c: Requestor
(w/o enclosures)