



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 9, 2022

Ms. Josi Diaz
Assistant City Attorney
Criminal Law & Police Unit
City of Dallas
1400 Botham Jean Boulevard
Dallas, Texas 75215

OR2022-07159

Dear Ms. Diaz:

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# 934109 (Ref. No. D030407).

The Dallas Police Department (the "department") received a request for a specified internal affairs case file. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the requestor has specifically excluded social security numbers from the instant request. Thus, this information is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the

¹ Although you do not cite to section 552.117, section 552.1175, or section 552.130 of the Government Code in your brief, we understand you to raise these exceptions based on your markings. In addition, we note the department did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the claimed exceptions can provide compelling reasons to overcome the presumption of openness, we will consider whether any of the submitted information is excepted from disclosure under the Act. *See id.* §§ 552.007, .302, .352.

² 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.

request and the department is not required to release such information in response to this request.

Next, we note the remaining information includes an officer's Texas Commission on Law Enforcement ("TCOLE") identification number, which you marked. Section 552.002(a) of the Government Code defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) 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. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officer's TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's TCOLE number is not subject to the Act and need not be released to the requestor.

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. This section encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only

for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find a portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the Lancaster Police Department under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). In addition, we find some of the information at issue identifies the person who made the report of the alleged or suspected abuse or neglect to Child Protective Services and the Lancaster Police Department. Accordingly, we find this information, which we marked and indicated, is subject to chapter 261 of the Family Code. You have not indicated the Lancaster Police Department has adopted a rule that governs the release of this type of information and therefore we assume no such regulation exists. Given that assumption, we conclude the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, none of the remaining information at issue is confidential under section 261.201 and the department may not withhold it under section 552.101 on that basis.

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.”⁴ 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 date of birth we marked under section 552.102(a) 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

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴The 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).

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 that common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. In addition, we note the court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. *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.). Upon review, we agree some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note, however, some of the information you marked pertains to an individual who has been de-identified and whose privacy interests are, thus, protected. Therefore, with the exception of the information we marked for release, the department must withhold the information you marked, as well as the additional information we marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy.⁵ However, we find none of the remaining information at issue is highly intimate or embarrassing to an identified individual and not of legitimate public concern. Thus, the department may not withhold this information, which we marked for release, under section 552.101 in conjunction with common-law privacy.

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 current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2); *id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individual whose information is at issue is a current or honorably retired peace officer as defined by article 2.12. If the individual whose information is at issue is a current or honorably retired 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. However, none of the remaining information at issue is subject to section 552.117(a)(2) and none of it may be withheld on that basis.

If the individual is not a current or honorably retired peace officer, then the individual's personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former

⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

employee of a governmental body who requests 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(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department may only withhold the information at issue under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 of the Government Code prior to the date on which the request for this information was made. If the individual is not a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure but timely requested confidentiality pursuant to section 552.024, the department must withhold the information we marked under section 552.117(a)(1). However, none of the remaining information at issue is subject to section 552.117(a)(1) and none of it may be withheld on that basis.

Section 552.1175 of the Government Code may be applicable to some of the remaining information. This section protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175, applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b). Accordingly, the department must withhold the information we marked under section 552.1175 of the Government Code if the individual whose information is at issue is a current or honorably retired peace officer and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. *Cf. id.* § 552.117(c). However, none of the remaining information at issue is subject to section 552.1175 and none of it may be withheld on that basis.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See id.* § 552.130. Accordingly, we find the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the officer's TCOLE number you marked is not subject to the Act and need not be released to the requestor. The department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold employee date of birth we marked under section 552.102(a) of the Government Code. With the exception of the information we marked for release, the department must withhold the information you marked, and the additional information we marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual whose information we marked is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure, then the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. If the individual is not a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure but timely requested confidentiality pursuant to section 552.024 of the Government Code, the department must withhold the information we marked under section

552.117(a)(1) of the Government Code. The department must withhold the information we marked under section 552.1175 of the Government Code if the individual whose information is at issue is a current or honorably retired peace officer and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The department must release the remaining responsive 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,

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/be

Ref: ID# 934109

Enc. Submitted documents

c: Requestor
(w/o enclosures)