



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 21, 2022

Mr. Francisco J. Garza
Counsel for Sullivan City
Garza Law Firm
P.O. Box 1635
Weslaco, Texas 78599

OR2022-08067

Dear Mr. Garza:

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# 934461.

The City of Sullivan City (the "city"), which you represent, received a request for the personnel file of a named employee of the city's police department (the "department"). You state the city will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes a department officer's Texas Commission on Law Enforcement ("TCOLE") identification number. 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;

¹ As you have not provided any arguments to support the remaining exceptions you claim in your brief, we assume the city has withdrawn its claim these exceptions apply to the submitted information. *See* Gov't Code §§ 552.301, .302. Further, although you generally assert the submitted information is privileged pursuant to the attorney-client and work product privileges, as you make no arguments to support these assertions, we assume the city has withdrawn its claim that these privileges apply. *Id.*

(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. You state the 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 552.102(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."² 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 city must withhold the public employee's date of birth we marked under section 552.102(a) of the Government Code.

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. 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

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 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). However, this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision 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), 470 at 4 (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 392 (1982) (reasons for employee's resignation ordinarily not private). Additionally, the Third 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.). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

After reviewing the remaining information at issue, we have determined no novel or complex issue exists in it. Thus, we address the remaining applicable exceptions in a summary ruling.

The city must withhold the submitted I-9 form and any attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The city must withhold the submitted W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the criminal history record information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the L-2 and L-3 forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The city must withhold the F-5 form we marked under section 552.101 of the Government Code in conjunction section 1701.454 of the Occupations Code. The city must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the city may only withhold a cellular telephone number if the cellular telephone service is not paid for by a governmental body. The city must withhold motor vehicle information,

including license plate numbers, driver's license numbers, states of issuance, and copies of driver's license cards, under section 552.130 of the Government Code. The city must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. The remaining information must be released.

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# 934461

Enc. Submitted documents

c: Requestor
(w/o enclosures)