



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2022

Ms. Amanda Rice
Assistant City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2022-08948

Dear Ms. Rice:

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# 939671.

The Temple Police Department (the "department") received a request for report number P21099348. The department claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code.¹ We have considered the exceptions the department 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." 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. Upon review, we find the department has not demonstrated any of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

¹ Although the department cites to section 552.117 of the Government Code for portions of the submitted information, we note section 552.1175 of the Government Code is the proper exception to raise for information the department holds in a law enforcement capacity rather than in an employment capacity.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Some of the remaining information relates to an individual who may be a former police officer. However, we are unable to determine from the information provided whether the individual at issue is a current or honorably retired licensed peace officer. Thus, we must rule conditionally. Accordingly, if the information at issue, which we marked, relates to an individual who is a current or honorably retired peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code; however, the marked telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual whose information is at issue is not a current or honorably retired peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175. In either case, 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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 939671

Enc. Submitted documents

c: Requestor
(w/o enclosures)