



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 4, 2022

Mr. Mark J. Schnall  
Counsel for the City of Kirby  
Langley & Banack, Inc.  
745 East Mulberry, Suite 700  
San Antonio, Texas 78212

OR2022-09769

Dear Mr. Schnall:

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# 940581.

The City of Kirby (the "city"), which you represent, received a request for all records pertaining to a named individual and two specified addresses. We understand you will redact social security numbers pursuant to section 552.147(b) of the Government Code. You claim some the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized

distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information the refers to an individual solely as a victim, witness, or involved person is not private and may not be withheld under section 552.101 on that basis.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note you have submitted information that does not list the named individual as a suspect, arrestee, or criminal defendant. This information does not constitute part of a criminal history compilation and may not be withheld on that basis. Accordingly, we will address your arguments against disclosure of this information.

We note, and you acknowledge, some of the information at issue is subject to section 1.012 of the Election Code, which provides, in part, as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (d)(3). An application for a place on an election ballot "is public information immediately on its filing." *Id.* § 141.035. Thus, the submitted applications to be placed on the ballot constitute "election record[s]" and are public information subject to disclosure, except as provided by the Act. *See id.* § 1.012(a), (c). Accordingly, we will address your arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4

forms). Section 6103(b) defines the term “tax return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. See *Mallas v. Kolalk*, 721 F.Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted W-4 form, which you marked, constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

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.”<sup>1</sup> 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 employee’s date of birth we marked under section 552.102(a) of the Government Code.<sup>2</sup>

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). 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 “family member” has meaning assigned by Fin. Code § 31.006(d)). In addition, we note, section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid for by a governmental body. See *Open Records Decision 506* at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by a governmental body and intended for official use). 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). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee or official only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely

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<sup>1</sup> 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).

<sup>2</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may only be withheld if the cellular telephone service is not paid for by a governmental body. Conversely, if the individual at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, then the city may not withhold the information at issue under section 552.117(a)(1).

Section 552.1175 of the Government Code 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(b). Section 552.1175 applies, in part, to "an elected public officer[.]" *See id.* § 552.1175(a)(17). For purposes of section 552.1175, "family member" means a spouse, minor child, or adult child who resides in the person's home. *Cf. id.* § 552.117(c). Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone services are not paid for by a governmental body. *See* ORD 506 at 5-6. Accordingly, if the individual at issue is a current elected public officer, the individual elects to restrict access to her information in accordance with section 552.1175(b) of the Government Code, and a governmental body does not pay for the cellular telephone service, then the city must withhold the information we marked under section 552.1175(a)(17) of the Government Code.

As noted above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. 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 individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information. As noted above, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person and is generally not of legitimate concern to the public. 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 pertains to an individual who has been de-identified and whose privacy interests are, thus, protected. Nevertheless, the city must withhold all identifiable public citizens' dates of birth in the remaining information and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's license, 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* Gov't Code § 552.130. Upon review, with the exception of the information we marked for release, we find the city must withhold the motor vehicle record

information you marked and the additional information we marked section 552.130 of the Government Code. However, we find you have failed to demonstrate the information we marked for release consists of motor vehicle record information subject to section 552.130, and thus, the city may not withhold it on that basis.

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”). Accordingly, the city must withhold the credit card number you marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). The e mail address at issue is not excluded by subsection (c). Accordingly, the city must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the submitted W-4 form, which you marked, 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 employee’s date of birth we marked under section 552.102(a) of the Government Code. If the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may only be withheld if the cellular telephone service is not paid for by a governmental body. If the individual at issue is a current elected public officer, the individual elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, and a governmental body does not pay for the cellular telephone service, then the city must withhold the information we marked under section 552.1175(a)(17) of the Government Code. The city must withhold all identifiable public citizens’ dates of birth in the remaining information and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the city must withhold the motor vehicle record information you marked and the additional information we marked section 552.130 of the Government Code. The city must withhold the credit card number you marked under section 552.136 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 affirmatively consents to its public disclosure. The city must release the remaining information.

Finally, you also ask this office to issue a previous determination that would permit the city to withhold dates of birth under section 552.101 of the Government Code in conjunction

with common-law privacy without requesting a decision from this office. *See* Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/jm

Ref: ID# 940581

Enc. Submitted documents

c: Requestor  
(w/o enclosures)