



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 5, 2022

Ms. Alicia K. Kreh
Counsel for the City of Southlake
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-09902

Dear Ms. Kreh:

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# 941557 (ORR# W003119).

The City of Southlake (the "city"), which you represent, received a request for information pertaining to a named former employee with the city. The city indicates it will withhold information pursuant to section 552.130(c) of the Government Code.¹ The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code. We have considered the claimed exceptions 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 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 the *Industrial Foundation* decision. *Id.* at 683. This

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code 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. Gov't Code § 552.117(a)(1). 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)). Whether 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 submitted information includes an election by the named employee to withhold certain personal information. Therefore, the city must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code pertaining to the named employee. Section 552.117 is not applicable to the remaining information and the city may not withhold any of it on that ground.

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. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure" and "a current or former employee of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters" *Id.* § 552.1175(a)(1), (5-a); *see id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). The city must withhold the telephone numbers we have marked under 552.1175 of the Government Code if (1) the information consists of home telephone numbers, (2) the individuals at issue are subject to section 552.1175, and (3) the individuals at issue elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. However, the city may not withhold this information under section 552.1175 if the telephone numbers are not home telephone numbers, the individuals are not subject to section 552.1175, or the individuals do not elect to restrict access to their information in accordance with section 552.1175(b). Section 552.1175 is not applicable to the remaining information and the city may not withhold any of it on that ground.

In summary, the city must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.117(a)(1) of the Government Code; and (3) the telephone numbers we have marked under 552.1175 of the Government Code if (1) the information consists of home telephone numbers, (2) the individuals at issue are subject to section 552.1175, and (3) the individuals at issue elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. The city 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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 941557

Enc. Submitted documents

c: Requestor
(w/o enclosures)