



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2022

Mr. Jeremy R. Page
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2022-11207

Dear Mr. Page:

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# 942018 [P021912].

The City of McKinney (the "city"), which you represent, received a request for information pertaining to ten named McKinney Police Department (the "department") police officers. You claim the requested information is generally excepted from disclosure under sections 552.101 through 552.154 of the Government Code. We have considered the exceptions you claim.

Initially, we note some of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2020-06400 (2020). In that ruling, we determined, in relevant part, the city must withhold the information we marked under section 552.1175 of the Government Code if the individual at issue is a currently-licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure who elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, we note section 552.1175 of the Government Code was recently amended by the 87th Legislature. Thus, there has been a change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, the city may not rely on Open Records Letter No. 2020-06400 as a previous determination with respect to the information previously determined to be subject to section 552.1175. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body,

and ruling concludes that information is or is not excepted from disclosure). Nevertheless, as we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based with respect to remaining information at issue in the ruling, the city must rely on Open Records Letter No. 2020-06400 as a previous determination with respect to that information and withhold or release the identical information in accordance with that ruling. Furthermore, we will consider the city's argument under section 552.1175, as recently amended, for any requested information previously determined to be subject to section 552.1175.

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[.]" *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Accordingly, to the extent any information previously determined to be subject to section 552.1175 relates to a current or honorably retired peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold it under section 552.1175 of the Government Code. However, 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), then the information at issue may not be withheld under section 552.1175 of the Government Code.

Next, we must address the city's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). As of the date of this letter, you have not requested written comments stating the reasons why the claimed exceptions apply or a copy or representative sample of the specific information requested. Consequently, we find the city failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although you raise arguments against disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but

to order the requested information not previously ruled on in OR2020-06400 released pursuant to section 552.302 of the Government Code. If the city believes the information is confidential and may not lawfully be released, the city must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, to the extent any of the requested information was previously determined to be subject to section 552.1175 at issue and it relates to a current or honorably retired peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, the city must withhold it under section 552.1175 of the Government Code. To the extent the remaining requested information is identical to the information previously requested and ruled upon by this office, the city must rely on Open Records Letter No. 2020-06400 as a previous determination and withhold or release the identical information in accordance with that ruling. 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,

Paige Lay
Assistant Attorney General
Open Records Division

PL/mo

Ref: ID# 942018

Enc. Submitted documents

c: Requestor
(w/o enclosures)