



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 23, 2022

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2022-14825

Dear Ms. Thomas:

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# 948915.

The City of Temple (the "city") received a request for current employee directory information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2021-20000 (2021). In this ruling, we determined the city must (1) withhold the types of information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code; (2) to the extent the information we marked pertained to undercover officers, withhold that information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception; and (3) release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information at issue is identical to the information previously requested and ruled upon by this office, the city must continue to rely on Open Records Letter No. 2021-20000 as a previous determination and withhold or release the identical information in accordance with this ruling.¹ 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

¹ In that instance, as we are able to make this determination, we need not address your arguments against disclosure of this information.

determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will consider the submitted arguments for the submitted information not subject to the previous ruling.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that is made confidential by other statutes. The city raises section 552.101 in conjunction with section 418.176 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.176 of the HSA provides in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers of the provider.

Id. § 418.176(a). The fact that information may be related to emergency preparedness does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The city argues some of the remaining information pertains to staffing requirements of the city’s emergency response providers. The city also states this information is “necessary to respond to threats of terrorism or criminal activities, and public access to these direct numbers could interfere with that purpose.” Upon review, we find some of the information at issue consists of a list or compilation of pager or telephone numbers of an emergency response provider that was collected, assembled, or maintained for the purpose of responding to an act of terrorism or related activity. *See id.* § 418.176(a)(3). Accordingly, the city must withhold the types of information we indicated under section 552.101 of the

Government Code in conjunction with section 418.176 of the Government Code.² However, we find the city has not demonstrated the remaining information relates to staffing requirements or tactical methods of an emergency response provider, nor does the remaining information consist of a list or compilation of pager or telephone numbers of an emergency response provider. Therefore, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception that the Texas Supreme Court recognized in *Texas Department of Public Safety v. Cox Texas Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 117 (Tex. 2011) (“freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). In the *Cox* decision, the Supreme Court recognized, for the first time, a common-law physical safety exception to required disclosure. *Cox*, 343 S.W.3d at 118. Pursuant to this common-law physical safety exception, the court determined “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned “vague assertions of risk will not carry the day.” *Id.* at 119. The city asserts release of some of the information would reveal the identities of officers working undercover and create a substantial threat of physical harm to the undercover officers. However, you have not marked or otherwise indicated which, if any, of the officers at issue are undercover officers, nor does the information at issue give any indication of the officers’ status. Thus, we must rule conditionally. To the extent the information we indicated pertains to undercover officers, we find release of this information would subject the undercover officers at issue to a substantial risk of physical harm. Accordingly, to the extent the information we indicated pertains to undercover officers, the city must withhold the information we indicated under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. However, to the extent the officers at issue are not working as undercover officers, we find the city has failed to demonstrate their identifying information is confidential under the common-law physical safety exception. In addition, we find the remaining information is not confidential under the common-law physical safety exception and the city may not withhold any of it under section 552.101 on that ground.

Section 552.101 of the Government Code also 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. However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See Open Records Decisions Nos. 562 at 10 (1990)* (personnel file information does not involve most intimate

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984). Upon review, we find the city has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city must continue to rely on Open Records Letter No. 2021-20000 as a previous determination and withhold or release the identical information in accordance with this ruling. The city must withhold the types of information we indicated under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. To the extent the information we indicated pertains to undercover officers, the city must withhold this information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. 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,

Joseph Hoggatt
Assistant Attorney General
Open Records Division

JWH/jxd

Ref: ID# 948915

Enc. Submitted documents

c: Requestor
(w/o enclosures)