



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2022

Ms. Moraima McGraw
Public Information Officer
Open Records Division
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2022-16419

Dear Ms. McGraw:

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# 950728 (Reference Nos. W429328-021122, W429331-021122, W429332-021122, W429333-021122, and W429335-021122).

The City of San Antonio (the "city") received five requests for certain communications between named individuals during defined periods of time. We understand the city released information to the requestor, but made redactions as permitted by sections 552.024(c) and 552.136(c) of the Government Code without requesting a decision from this office. We note the city also redacted personal e-mail addresses of members of the public pursuant to Open Records Decision No. 684 (2009).¹ Pursuant to sections 552.024(c-1) and 552.136(d), the requestor has asked this office to review the information redacted by the city and render a decision as to whether it is excepted from disclosure under sections 552.117(a)(1) and 552.136(b) of the Government Code. We also understand the city claims some of the submitted information is excepted from disclosure section 552.101 of the Government Code. We have considered the city's position and reviewed the information.

¹ Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including e-mail addresses of members of the public subject to section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 *Industrial Foundation*. *Id.* at 683. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must continue to withhold the information you redacted 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 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 that “family member” has meaning assigned by Fin. Code § 31.006(d)). Additionally, section 552.117 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). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must continue to withhold the cellular telephone number you redacted under section 552.117(a)(1) of the Government Code; however, the redacted cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the city may not withhold this information at issue under section 552.117(a)(1).

Section 552.136(b) 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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We understand the employee identification numbers you redacted consist of unique identifiers that can be used by employees of the city to obtain things of value. Accordingly, the city must continue to withhold the employee identification numbers you redacted under section 552.136 of the Government Code.

In summary, the city must withhold continue to withhold the information you redacted under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must continue to withhold the cellular telephone number you redacted under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The city must continue to withhold the employee identification numbers you redacted under section 552.136 of the Government Code.

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,

Jahnna Ward
Assistant Attorney General
Open Records Division

JW/be

Ref: ID# 950728

Enc. Submitted documents

c: Requestor
(w/o enclosures)