



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2022

Ms. Lauren Azopardi
Assistant City Attorney
City of Fort Worth
200 Texas Street, 3rd Floor
Fort Worth, Texas 76102

OR2022-21418

Dear Ms. Azopardi:

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# 961008 (PIR# R004056-042722).

The City of Fort Worth (the "city") received a request for information pertaining to a specified investigation involving a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 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. This section encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement (the "commission") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information includes an F-5 Separation of Licensee form that was submitted to the commission pursuant to subchapter J of chapter 1701 of the

Occupations Code. However, we are unable to determine whether the individual at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Thus, we must rule conditionally. If the individual at issue did not resign or was not terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, then the city must withhold the F-5 form in its entirety under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, if the individual at issue resigned or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, then the city may not withhold the F-5 form on that ground.

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.”¹ 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 employees’ dates of birth we marked under section 552.102(a) of the Government Code.

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 the *Industrial Foundation* decision. *Id.* at 683. This office has found information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). 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.). 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 remaining information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold all public citizens’ dates of birth and the information we marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding

¹ 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 No. 481 (1987), 480 (1987), 470 (1987).

disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information, we find some of the information at issue, which we indicated, implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the city must withhold the information we indicated under section 552.101 in conjunction with constitutional privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2); *id.* §552.003(1-b) (defining "honorably retired" for purposes of the Act). 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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance we are unable to determine whether the former city police officer whose information is at issue is currently a licensed or honorably retired peace officer; therefore, we must rule conditionally. If the employee at issue is a currently-licensed or honorably retired peace officer, the city must withhold the information we marked and indicated under section 552.117(a)(2) of the Government Code; however, the city may only withhold any marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the employee at issue is not a currently-licensed or honorably retired peace officer, the city may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

If the employee at issue is not currently a licensed or honorably retired peace officer, the information at issue may be subject to section 552.117(a)(1) of the Government Code. 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). As noted above, 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). Section 552.117(a)(1) 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 by a governmental

body. *See* ORD 506 at 5-6. 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). Thus, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee 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 employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked and indicated under section 552.117(a)(1) of the Government Code; however, the city may only withhold any marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the employee at issue did not timely request confidentiality under section 552.024, 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. We note section 552.1175 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* ORD 506 at 5-6. Section 552.1175, applies, in part, to “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” Gov't Code § 552.1175(a)(1)); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). Accordingly, the city must withhold the information we marked under section 552.1175 of the Government Code if the individual at issue is a current or honorably retired peace officer and elects to restrict access to the marked information at issue in accordance with section 552.1175(b) of the Government Code. Conversely, if the individual at issue is not a current or honorably retired peace officer or does not elect to restrict access to the information at issue in accordance with section 552.1175(b), then the city may not withhold this information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides 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 is excepted from public release. *See* Gov't Code § 552.130. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, if the individual at issue did not resign or was not terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, then the city must withhold the F-5 form in its entirety under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the employees' dates of birth we marked under section 552.102(a) of the Government Code. The city must withhold all public citizens' dates of birth and the information we marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we indicated under section 552.101 in conjunction with constitutional privacy. If the employee at issue is a currently-licensed or honorably retired peace officer, the city must withhold the

information we marked and indicated under section 552.117(a)(2) of the Government Code; however, the city may only withhold any marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. If the employee 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 city may only withhold any marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. The city must withhold the information we marked under section 552.1175 of the Government Code if the individual at issue is a current or honorably retired peace officer and elects to restrict access to the marked information at issue in accordance with section 552.1175(b) of the Government Code. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must release the remaining information.²

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/eb

Ref: ID# 961008

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² We note the remaining information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).