



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2022

Mr. Chris Moore
Chief of Communications
Crandall Independent School District
400 West Lewis Street
Crandall, Texas 75114

OR2022-23800

Dear Mr. Moore:

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# 965406.

The Crandall Independent School District (the "district") received a request for information pertaining to former district chief of police. The district states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.102 and 552.117 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."¹ 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

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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 contains an F-5 Separation of Licensee form that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The submitted F-5 form does not reflect the named former officer to whom this form applies was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the district must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

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[.]” Gov’t Code § 552.102(a). The Texas Supreme Court has 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). The district must withhold the submitted dates of birth under section 552.102(a) of the Government Code. However, section 552.102(a) is not applicable to the remaining information. Accordingly, the district may not withhold any of the remaining information on that basis.

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. Additionally, this office has 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 submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the district 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)(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); *see also id.* 552.003(1-b)) (defining “honorably retired” for purposes of the Act). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of

Criminal Procedure. Accordingly, if the individual whose information we have marked is a current or honorably retired peace officer as defined by article 2.12, then the district must withhold the information we have marked under section 552.117(a)(2) of the Government Code. Conversely, if this individual is not a current or honorably retired peace officer as defined by article 2.12, then the district may not withhold the marked information under section 552.117(a)(2). The district has not established section 552.117 is applicable to the remaining information and may not withhold it on that ground.

If the information we have marked under section 552.117 pertains to an individual who is not a current or honorably retired peace officer, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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). 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). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the individual at issue timely elected to withhold that information.²

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 district must withhold the submitted driver's license number under section 552.130 of the Government Code.

In summary, the district must withhold the following: (1) the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (2) the submitted dates of birth under section 552.102(a) of the Government Code; (3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the submitted driver's license number under section 552.130 of the Government Code. The district must also withhold the information we have marked under section 552.117(a)(2) of the Government Code if the individual at issue is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure; however, if this individual is not a current or honorably retired peace officer as defined by article 2.12 and she timely requested confidentiality under section 552.024 of the Government Code, then the district must withhold the information at issue under section 552.117(a)(1) of the Government Code. The district must release the remaining information.

^{2 2} Regardless of the applicability of section 552.117, 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. Gov't Code § 552.147(b).

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/jm

Ref: ID# 965406

Enc. Submitted documents

c: Requestor
(w/o enclosures)