



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 15, 2022

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
1400 Botham Jean Boulevard
Dallas, Texas 75215

OR2022-24242

Dear Ms. McClellan:

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# 966392 (ORR# D009476-041122/C003346-040922).

The Dallas Police Department (the "department") received a request for personnel records pertaining to a named individual. We understand you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

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

¹ 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. *See* Gov't Code § 552.147(b).

² You acknowledge, and we agree, you did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, sections 552.101, 552.117, 552.130, and 552.136 can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301 of the Government Code.

³ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.101. Section 552.101 encompasses the confidentiality provisions found in chapter 55 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides, in part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has determined records subject to an expunction order are not subject to public disclosure under the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). The department states some of the submitted information is subject to an expunction order. However, the department has not submitted a copy of the signed expunction order pertaining to the information at issue. We nevertheless conclude, to the extent any of the information at issue is the subject of a signed expunction order, the department must withhold any such information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. To the extent this information is not the subject of a signed expunction order, the information may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.117(a)(2) of the Government Code exempts 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) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individual whose information is at issue is a current or honorably retired peace officer as defined by article 2.12. Accordingly, if the individual at issue is a current or honorably retired peace officer as defined by article 2.12, then with the exception of the information we marked for release, the department must withhold the information you marked and we marked under section 552.117(a)(2) of the Government Code.⁴ Conversely, if the individual at issue is not a current or honorably retired peace officer as defined by article 2.12, the information at issue may not be withheld under section 552.117(a)(2) of the Government Code. In either instance, we find you have failed to demonstrate the applicability of section 552.117(a)(2) to the information we marked for release, and no portion of it may be withheld under section 552.117(a)(2) of the Government Code.

If the individual at issue is not a current or honorably retired peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov’t Code § 552.117(a)(1). 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 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, with the exception of the information we marked for release, the department must withhold the information you marked and we marked under section 552.117(a)(1) of the Government Code.⁵ Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the department may not withhold the information at issue under section 552.117(a)(1). In either instance, we find you have failed to demonstrate the applicability of section 552.117(a)(1) to the information we marked for release, and no portion of it may be withheld under section 552.117(a)(1) of the Government Code.

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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.”⁶ 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 department must withhold the date of birth of the employee at issue under section 552.102(a) of the Government Code.⁷

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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy). 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.). However, this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee’s private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee’s job was performed cannot be said to be of minimal public interest), 392 (1982) (reasons for employee’s resignation ordinarily not private). We further note the scope of a public employee’s privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we marked for release, the department must withhold the information you marked and all public citizens’ dates of birth in the remaining

⁶ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470.

⁷ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the information we marked for release is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the information we marked for release may be withheld under section 552.101 in conjunction with common-law privacy.

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. Accordingly, the department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The department asserts the submitted employee numbers also serve as access device numbers. We therefore conclude the department must withhold all employee identification numbers under section 552.136 of the Government Code.

In summary, to the extent any of the information at issue is the subject of a signed expunction order, the department must withhold any such information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. To the extent the individual at issue is a current or honorably retired peace officer as defined by article 2.12, then with the exception of the information we marked for release, the department must withhold the information you marked and we marked under section 552.117(a)(2) of the Government Code. To the extent the individual at issue is not a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure, but timely requested confidentiality under section 552.024 of the Government Code, with the exception of the information we marked for release, the department must withhold the information you marked and we marked under section 552.117(a)(1) of the Government Code. The department must withhold the date of birth of the individual at issue under section 552.102(a) of the Government Code. With the exception of the information we marked for release, the department must withhold the information you marked and all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The department must withhold all employee identification numbers under section 552.136 of the Government Code. The department 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/mo

Ref: ID# 966392

Enc. Submitted documents

c: Requestor
(w/o enclosures)