



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2022

Ms. Nancy Gonzalez
Open Records Coordinator
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2022-24503

Dear Ms. Gonzalez:

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# 966640 (ORR# C004505).

The City of Dallas (the “city”) received a request for information pertaining to a named employee.¹ The city claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). We note section 552.108 is generally not applicable to purely administrative records that do not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840

¹The city sought and received clarification of the information requested. *See* Gov’t Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). Upon review, we find the city has failed to establish section 552.108(a)(1) is applicable to the submitted information. Therefore, the city may not withhold any of the submitted information on that ground.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. This section encompasses information protected by other statutes, including federal law. The submitted information contains a W-4 tax form. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Employee W-4 tax forms are excepted from disclosure by section 6103(a). Open Records Decision No. 600 (1992). Accordingly, the city must withhold the submitted W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

The submitted information contains an Employment Eligibility Verification, Form I-9 and its attachment, which are located on pages 25-27 of the submitted documents. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the city must withhold pages 25-27 of the submitted documents under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States 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 city must withhold the submitted date of birth 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*

² 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).

Foundation decision. *Id.* at 683. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find pages 39 and 45-50 of the submitted documents satisfy the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the city must withhold pages 39 and 45-50 of the submitted documents 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 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). The submitted information includes an election by the named employee to withhold certain personal information. Therefore, the city must withhold the submitted social security number and the information we have marked under section 552.117(a)(1) of the Government Code pertaining to the named employee.

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 submitted driver's license number, type, and issuing state under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The remaining information contains an e-mail address of a member of the public that does not appear to be of a type specifically excluded by section 552.137(c), and the [] does not inform us a member of the public has affirmatively consented to its release. Therefore, the [] must withhold the e-mail address of a member of the public in the remaining information under section 552.137 of the Government Code.

In summary, the city must withhold the following: (1) the submitted W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (2) pages 25-27 of the submitted documents under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (3) the submitted date of birth under section 552.102(a) of the Government Code; (4) pages 39 and 45-50 of the submitted documents under section 552.101 of the Government Code in conjunction with common-law privacy; (5) the submitted social security number and the information we have marked under section 552.117(a)(1) of the Government Code pertaining to the named employee; (6) the submitted driver's license

number, type, and issuing state under section 552.130 of the Government Code; and (7) the e-mail address of a member of the public in the remaining information under section 552.137 of the Government Code. 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 966640

Enc. Submitted documents

c: Requestor
(w/o enclosures)