



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2023

Ms. Rachel Raggio
Counsel for City of Haltom City
Taylor Olson Adkins Sralla Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-25027A

Dear Ms. Raggio:

This office issued Open Records Letter No. 2022-25027 (2022) on August 22, 2022. Since that time, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for Open Records Letter No. 2022-25027. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Your request was assigned ID# 041137.

The City of Haltom City (the "city"), which you represent, received a request for information pertaining to a named officer. You state you will redact certain information subject to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code, certain information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001), motor vehicle record information under section 552.130(c) of the Government Code, social security numbers under section 552.147(b) of the Government Code, and information pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the

¹ 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. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117(a)(1) without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of

submitted information is excepted from disclosure under sections 552.101 and 552.108 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.” *Id.* § 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information you marked and we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (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

requesting an attorney general decision. *See* ORD 670 at 6. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). 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 id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

(1982). You state some of the information at issue relates to a closed criminal investigation that did not result in conviction or deferred adjudication. However, the information at issue consists of administrative records of the city's police department and is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, the city has failed to demonstrate the applicability of section 552.108(a)(2) to the information you marked, and the city may not withhold it on that basis.

As noted above, you state the city will redact certain information subject to section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670. Section 552.117(a)(2) 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). We also 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. We understand the individual whose information is at issue is an individual subject to section 552.117(a)(2). *See id.* § 552.117(a)(2). Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked and the additional information we marked under section 552.117(a)(2) of the Government Code. Upon review, however, we find the information we marked for release does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or honorably retired peace officer, and the city may not withhold such information under section 552.117(a)(2).

In summary, the city must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the city must withhold the information you marked and the additional information we marked under section 552.117(a)(2) 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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/pt

Ref: ID# 041137

Enc. Submitted documents

c: Requestor
(w/o enclosures)