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ATTORNEY GENERAL OF TEXAS

October 28, 2022

Ms. Tessa K. Meredith
Counsel for the City of Commerce
Messer Fort McDonald PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

OR2022-33422

Dear Ms. Meredith:

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# 977646 (ORR# COM081022HK).

The City of Commerce (the "city"), which you represent, received a request for information pertaining to a named individual. The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 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." Gov't Code § 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 the *Industrial Foundation* decision. *Id.* at 683. 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.). The city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the remaining information is not

confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

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). We note section 552.117 applies only to information that a governmental body holds in an employment context. The submitted information consists of law enforcement records and, thus, we find the city does not maintain it in an employment capacity. Accordingly, the city may not withhold any of the submitted information under section 552.117 of the Government Code.

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.¹ *Id.* § 552.1175. Section 552.1175, applies to “a current or former district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]” *Id.* § 552.1175(a)(5). Accordingly, the city must withhold under section 552.1175 of the Government Code the home address and telephone number it has marked if this information pertains to an individual who is subject to section 552.1175(a) of the Government Code and elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code. However, if the individual is not subject to section 552.1175(a) of the Government Code or does not elect to restrict access to this information in accordance with section 552.1175(b), then the city may not withhold the information at issue 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. Upon review, we find section 552.130 is not applicable to the marked student identification number. Therefore, the city may not withhold the student identification number on that ground. Nevertheless, we agree the city must withhold the remaining information it has marked under section 552.130 of the Government Code.

In summary, the city must withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold under section 552.1175 of the Government Code the home address and telephone number

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

it has marked if this information pertains to an individual who is subject to section 552.1175(a) of the Government Code and elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code. With the exception of the marked student identification number, which the city must release, the city must withhold information it has marked under section 552.130 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/mo

Ref: ID# 977646

c: Requestor