



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2022

Ms. June B. Harden
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2022-33531

Dear Ms. Harden:

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# 980386 (PIR No. R013477).

The Office of the Attorney General (the "OAG") received a request for five categories of information pertaining to a named individual. The OAG states it has released most of the personnel records with redactions allowed by law.¹ The OAG also states it is withholding

¹ Section 552.117 of the Government Code exempts 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 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). 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 id.* § 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). In Open Records Letter No. 2011-18124 (2011), this office issued the OAG a previous determination authorizing it to withhold an employee's user identification under section 552.139 of the Government Code without the necessity of requesting a decision from this office. In Open Records Letter No. 2016-21830 (2016), this office issued the OAG a previous determination authorizing it to withhold photographs of its employees created specifically for use on identification badges under section 552.139(b)(3) of the Government Code without the necessity of requesting a decision from this office.

certain information pursuant to Open Records Decision No. 684 (2009).² The OAG claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.³

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement (“TCOLE”) under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides:

- (a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the 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 [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. Exhibit C consists of an F-5 Report of Separation of Licensee. The OAG states, and the information at issue does not indicate, the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Accordingly, the OAG must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations 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 *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

² 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. *See* ORD 684.

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.

highly intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 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 agree the information in Exhibit B satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the OAG must withhold Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the OAG must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The OAG must withhold Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy.

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 M. Graham
Assistant Attorney General
Open Records Division

JMG/pt

Ref: ID# 980386

Enc. Submitted documents

c: Requestor
(w/o enclosures)