



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2022

Ms. Lori J. Robinson
Counsel for the City of Granite Shoals
Bickerstaff Heath Delgado Acosta LLP
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2022-36313

Dear Ms. Robinson:

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# 986426.

The City of Granite Shoals (the "city") received a request for information pertaining to a named officer. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the claimed exception 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. This section encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement (the "commission") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], 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 commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information contains F-5 Separation of Licensee forms of the named officer that were submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The submitted F-5 forms do not reflect the named officer was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations 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[.]”¹ 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.²

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). 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. Accordingly, if the named officer is a current or honorably retired peace officer as defined by article 2.12, then the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. Conversely, if this individual is not a current or honorably retired peace officer as defined by article 2.12, then the city may not withhold the marked information under section 552.117(a)(2). The city has not established section 552.117 is applicable to the remaining information and may not withhold it on that ground.

In summary, the city must withhold the following: (1) the submitted F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (2) the submitted date of birth under section 552.102(a) of the Government Code; and (3) the information we have marked under section 552.117(a)(2) of the Government Code if the named officer is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure. The city must release the remaining information.

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).

² As our ruling is dispositive, we do not address the arguments of the city to withhold this 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/pt

Ref: ID# 986426

Enc. Submitted documents

c: Requestor
(w/o enclosures)