



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2012

Ms. Lisa D. Mares  
For City of Southlake  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2012-02727

Dear Ms. Mares:

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# 446259.

The City of Southlake (the "city"), which you represent, received a request for (1) "any and all disciplinary action(s) of Southlake Department of Public Safety personnel related to any incident(s) having occurred at the Republic of Texas Rally held in June 2011 in Austin, Texas" and (2) "any and all records[,] including but not limited to[,] pictures, audios, video, witness and complainant statement(s)[,] in their original formats[,] as well as all evidence submitted and[/]or used pertaining to any and all Internal Affairs investigation[s] from 02/01/2011 and 10/31/2011." We note you will make some of the requested information available to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.147, and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See Gov't Code* § 52.304 (interested party may submit written comments regarding availability of requested information).

Initially, we address the requestor's contention that the city did not comply with the procedural requirements of the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b).

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<sup>1</sup>Although you raise section 552.151 of the Government Code for the submitted information, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

Additionally, under section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The city received the request for information on November 29, 2011. Therefore, the city's ten-business-day deadline was December 13, 2011. Upon review, we find the city timely requested a ruling from our office, and timely sent the requestor a copy of its written communication to the attorney general. Thus, we conclude that the city fully complied with the requirements of section 552.301 in requesting this decision.

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 information protected by other statutes, such as section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review we find the information you have highlighted, in addition to the information we have marked and indicated in the submitted audio recordings,

constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the polygraph information you have highlighted and we have marked and indicated under section 552.101 of the Government Code in conjunction with section 703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to a 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) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked in the submitted documents and indicated in the submitted audio recordings is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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 recently 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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we find the information we have marked must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.<sup>2</sup> Gov’t Code § 552.117(a). The city generally must withhold the personal information you have highlighted, in addition to the information we have marked in the submitted documents and indicated in the audio recordings, except where we have marked for release, under section 552.117(a)(2) of the Government Code. However, we note one of the individuals whose information is at issue is not a peace officer. The city may not withhold the information pertaining to him under section 552.117(a)(2) of the Government Code. Notwithstanding the applicability of section 552.117(a)(2), this individual’s information is subject to section 552.117(a)(1) of the Government Code.

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). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. You state, and provide documentation, that the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. Therefore, the city must withhold the information you have highlighted, in addition to the information we have marked that pertains to him, except where we have marked for release, under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state

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<sup>2</sup>“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

or another state or country. Gov't Code § 552.130(a)(1). Upon review, we find the city must withhold the information we have marked under section 552.130 of the Government Code.

We note some of the remaining information is subject to section 552.137 of the Government Code.<sup>3</sup> Section 552.137 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). *Id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 52.152. You inform us that a portion of the submitted information relates to an undercover police officer, and state release of this information would subject this undercover officer to a substantial threat of physical harm. However, upon review, we find no information that identifies an undercover officer, nor have you marked any specific information as pertaining to an undercover officer. Therefore, the city may not withhold any of the submitted information under section 552.152 of the Government Code.

In summary, the city must withhold the polygraph information you have highlighted and we have marked in the submitted documents and indicated in the submitted audio recordings under section 552.101 of the Government Code in conjunction with section 703.306 of the Occupations Code. The city must withhold the information we have marked in the submitted documents and indicated in the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.102(a) of the Government Code. The city generally must withhold the personal information you have highlighted and we have marked in the submitted documents and indicated in the submitted audio recordings, except where we have marked for release, under section 552.117(a)(2) of the Government Code. The city must withhold the information you have highlighted and we have marked in the submitted documents, except where we have marked for release, under section 552.117(a)(1) of the

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Government Code. The city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The remaining information must be released.<sup>4</sup>

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 446259

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the remaining information contains a social security number. 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 under the Act. Gov't Code § 552.147(b).