



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-07647

Dear Ms. Graham:

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# 454265.

The Mesquite Police Department (the "department") received a request for a specified report. You state the department is redacting a social security number pursuant to section 552.147(b) of the Government Code.¹ You claim some of the remaining submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this

¹Section 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).

test must be satisfied. *See id.* at 681-82. The types of information considered intimate and 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. *See id.* at 683. We note home addresses and telephone numbers of individuals are generally not protected by common-law privacy under section 552.101. *See* Open Records Decision Nos. 554 at 3 (1990) (public disclosure of an individual's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as “intimate aspects of human affairs”). Upon review, we find you have failed to demonstrate any portion of the information you have marked is highly intimate or embarrassing. Accordingly, none of the information you have marked may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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 a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117, .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or 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. We note, however, that section 552.117 applies only to records that a governmental body is holding in an employment capacity. The submitted information consists of law enforcement records maintained by the department and is not held by the department as an employer. Therefore, we find section 552.117(a) of the Government Code does not apply in this situation, and the department may not withhold any portion of the information you have marked on that basis.

However, the department may be required to withhold the personal information in question under section 552.1175 of the Government Code.² This section is applicable to information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. Gov't Code § 552.1175(a). Section 552.1175(b) provides, in part, the following:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(b). We note a pager, fax, or cellular telephone number provided to an employee at public expense may not be withheld under section 552.1175. *See generally* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Upon review, we find the department must withhold the information we have marked under section 552.1175 if the officer at issue elects to restrict access to his information in accordance with section 552.1175(b).³ However, we note the remaining information you have marked does not consist of the home address, home telephone number, emergency contact information, social security number, or family information of a peace officer. Accordingly, the department may not withhold this information under section 552.1175 of the Government Code. Furthermore, the department may not withhold the cellular telephone number marked under section 552.1175 if a governmental body paid for the cellular telephone service.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). The department must withhold the driver's license number you have marked under section 552.130.

In summary, the department must withhold the information we have marked under section 552.1175 of the Government Code if the officer at issue elects to restrict access to his information in accordance with section 552.1175(b); however, the department may not withhold the cellular telephone number marked under section 552.1175 if a governmental body paid for the cellular telephone service. The department must withhold the driver's

³In the event the officer's social security number is not excepted from disclosure under section 552.1175, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living individual's social security number without the necessity of requesting a decision.

license number you have marked under section 552.130 of the Government Code. The department must release the remaining information.⁴

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, 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 Nottingham
Assistant Attorney General
Open Records Division

SN/akg

Ref: ID# 454265

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released contains the requestor's driver's license number, which is generally confidential under section 552.130 of the Government Code and social security number, which may generally be withheld under section 552.147 of the Government Code. However, because sections 552.130 and 552.147 protect personal privacy, the requestor has a right to her own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Additionally, we note 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. *Id.* § 552.147(b). Thus, if the department receives another request for this same information from a person who does not have such a right of access, sections 552.130(c) and 552.147(b) of the Government Code authorize the department to redact the driver's license number and social security number, respectively.