



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2012

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

OR2012-09223

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# 456525.

The City of Southlake (the "city"), which you represent, received a request for information pertaining to any 2011 or 2012 investigations regarding a named police officer. You state the city is releasing some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that Exhibit B-1 and the information you have marked in Exhibit B pertain to a criminal case that concluded in a result other than conviction or deferred adjudication. Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

As you acknowledge, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic front page offense information, the city may withhold Exhibit B-1 and the information you have marked in Exhibit B under section 552.108(a)(2).<sup>1</sup>

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 common-law right of privacy, which protects information if it (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. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type 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 some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision 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), 470 at 4 (1987) (job performance does not generally constitute public employee’s private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee’s dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee’s job was performed cannot be said to be of minimal public interest), 392 (1982) (reasons for employee’s resignation ordinarily not private).

Upon review, we find that the information we have marked in Exhibit B and indicated in the audio recording in Exhibit C is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked and indicated pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate that the remaining information

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

you have marked in Exhibit B is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the remaining information you have marked in Exhibit B under section 552.101 on this basis.

You raise section 552.102 of the Government Code for the information in Exhibit B. Section 552.102(a) 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.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find none of the remaining information in Exhibit B is excepted under section 552.102(a) of the Government Code. Accordingly, none of the remaining information in Exhibit B may be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117(a)(2) protects a peace officer’s personal cellular telephone number if the officer pays for the cellular telephone service with his personal funds. Open Records Decision No. 670 at 6 (2001); *cf.* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials’ and employees’ private vehicles and intended for official business). You state the individuals whose information is at issue are licensed peace officers. We note a portion of the information you have marked is not information that is subject to section 552.117. As such, the city may not withhold this information, which we have marked for release, on this basis. We conclude, with the exception of the information we have marked for release in Exhibit B, the city must withhold the information you have highlighted in Exhibit B, the additional information we have marked for withholding in Exhibit B, and the information we have indicated in the audio recordings in Exhibit C under section 552.117(a)(2).<sup>2</sup> The city must withhold the cellular telephone numbers of peace officers only if the cellular telephone service is not paid for by a governmental body.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

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<sup>2</sup>We note the previous determination issued in Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

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).<sup>3</sup> Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we have marked in Exhibit B and indicated in the audio recording in Exhibit C under section 552.137 unless the owner of the address affirmatively consents to its release.<sup>4</sup>

In summary, with the exception of basic information, the city may withhold Exhibit B-1 and the information you have marked in Exhibit B under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked and indicated in Exhibits B and C pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release in Exhibit B, the city must withhold the information you have highlighted and we have marked for withholding in Exhibit B, and the information we have indicated in the audio recordings in Exhibit C under section 552.117(a)(2) of the Government Code, unless the cellular telephone service is paid for by a governmental body. The city must withhold the e-mail address we have marked in Exhibit B and indicated in the audio recording in Exhibit C under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release. The city must release the remaining information.<sup>5</sup>

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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).

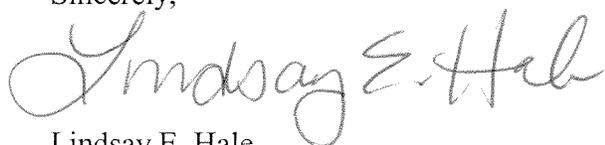
<sup>4</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>5</sup>We note Exhibit C contains information relating to the requestor that the city would ordinarily be required to withhold under section 552.117 of the Government Code. Because section 552.117 protects privacy, the requestor has a right of access to his own private information under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); ORD 481 at 4 (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). As previously noted, Open Records Decision No. 670 authorizes all governmental bodies to withhold the personal information of currently licensed peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. *See* ORD 670 at 5-6. Accordingly, if the city receives another request for this information from an individual other than this requestor, and the requestor is still a currently licensed peace officer, the city may withhold the personal information relating to the requestor in Exhibit C pursuant to section 552.117(a)(2) and Open Records Decision No. 670 without requesting another ruling.

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,

A handwritten signature in cursive script that reads "Lindsay E. Hale".

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 456525

Enc. Submitted documents

c: Requestor  
(w/o enclosures)