



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2014

Ms. Shanna S. Cargill  
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Hayes, Berry, White & Vanzant, L.L.P.  
P.O. Box 50149  
Denton, Texas 76206

OR2014-15063

Dear Ms. Cargill:

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# 534506.

The City of Krum (the "city"), which you represent, received a request for information pertaining to applicants for a specified position with the Krum Police Department (the "department"). You state you will release some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.115, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a court-filed document subject to section 552.022 of the Government Code. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). You seek to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, because sections 552.117 and 552.1175 of the Government Code make information confidential for purposes of

section 552.022(a)(17), we will address the applicability of these sections to the information at issue and the remaining information.<sup>1</sup> Additionally, we will consider your arguments under sections 552.101, 552.115, 552.117, and 552.1175 for the remaining information not subject to section 552.022.

Section 552.117(a)(2) of the Government Code exempts from public disclosure the current and former home addresses and telephone numbers, 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 sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). We note section 552.117 is also applicable to personal cellular telephone or pager numbers, provided the cellular telephone or pager service is not paid for by a governmental body. *See* 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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers employed by the department. If the individuals at issue are currently licensed peace officers employed by the department, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the cellular telephone numbers at issue under section 552.117 if the cellular service is not paid for by a governmental body. If the individuals whose information is at issue are not currently licensed peace officers with the department, the information we have marked may not be withheld under section 552.117(a)(2).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" "commissioned security officers as defined by Section 1702.002, Occupations Code[.]" "employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]" and "federal judges and state judges as defined by Section 13.0021, Election Code[.]" *Id.* § 552.1175(a)(1), (4), (5), (10). Some of the individuals at issue may be subject to section 552.1175. Thus, to the extent the information we have marked pertains to individuals subject to section 552.1175(a), and the individuals at issue elect to restrict access to this information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. The city may only withhold the cellular

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

telephone numbers at issue under section 552.1175 if the cellular service is not paid for by a governmental body. If the individuals whose information we have marked are not subject to section 552.1175(a) or no election is made, the city may not withhold this information under section 552.1175 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes, including federal law. The submitted information contains an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, the city must withhold the submitted I-9 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as follows:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the submitted information contains a W-4 form which constitutes tax return information that is confidential under section 6103(a). Accordingly, the city must withhold the submitted W-4 form, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

You raise section 552.101 of the Government Code in conjunction with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) for portions of the submitted information. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We therefore held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the city may not withhold any portion of the information at issue on that basis.

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. 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 also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 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 find the information we have marked satisfies the standard articulated by the Texas Supreme

Court in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we address your argument under section 552.115 of the Government Code. Section 552.115 excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because they are maintained by the city, the submitted birth certificates may not be withheld under section 552.115 of the Government 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.” Gov’t Code § 552.102(a). The Texas Supreme Court 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). We have marked dates of birth within the submitted information. To the extent the marked dates of birth pertain to current or former city employees, the city must withhold them under section 552.102(a) of the Government Code. However, to the extent the marked dates of birth pertain to individuals who are not current or former employees of the city, the city may not withhold them under section 552.102(a).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130(a)(2). Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the city must withhold the bank account numbers, bank account routing numbers, and insurance policy numbers we have marked under section 552.136 of the Government Code.

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 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). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail 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, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). We note the submitted information includes personal e-mail addresses. Upon review, we find the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, to the extent the individuals at issue are currently licensed peace officers with the department, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the cellular telephone numbers at issue under section 552.117 if the cellular telephone services are not paid for by a governmental body. To the extent the information we have marked pertains to individuals subject to section 552.1175(a), and the individuals at issue elect to restrict access to this information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. The city may only withhold the cellular telephone numbers at issue under section 552.1175 if the cellular telephone services are not paid for by a governmental body. The city must withhold the submitted I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and the submitted W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. To the extent the dates of birth we have marked pertain to current or former city employees, the city must withhold them under section 552.102(a) of the Government Code. The city must also withhold: the motor vehicle record information we marked under section 552.130 of the Government Code; the bank account numbers, bank account routing numbers, and insurance policy numbers we marked under section 552.136 of the Government Code; and the e-mail addresses we marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies. The remaining information must be released.<sup>2</sup>

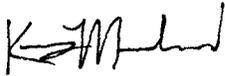
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>Regardless of the applicability of sections 552.117 and 552.1175 of the Government Code, we note section 552.147(b) of the Government Code authorizes a government 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).

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 534506

Enc. Submitted documents

c: Requestor  
(w/o enclosures)