



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2014

Ms. Janet L. Kellogg  
Assistant City Attorney  
Legal Department  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2014-18888

Dear Ms. Kellogg:

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# 539986.

The City of Corpus Christi (the "city") received a request for the personnel file of a named former employee of the city Marshal's Office, and all records pertaining to that individual's separation from the city Marshal's Office. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.136 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Additionally, this office has also found personal financial information not relating to the financial transaction between an individual and a

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<sup>1</sup>We understand the city to raise sections 552.102, 552.117, 552.130, and 552.136 of the Government Code based on your markings.

governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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), 455 at 9 (1987) (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 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 or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). 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 have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, no portion of the remaining information may be withheld under section 552.101 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 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 the information we have marked must be withheld under section 552.102(a) of the Government Code.

We note some of the remaining information may be excepted under section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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. To the extent the individual at issue is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

If the individual is not currently a licensed peace officer, section 552.117(a)(1) of the Government Code may apply to the information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece

of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *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. Accordingly, the individual at issue made a timely election under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1). If the individual did not make a timely election under section 552.024, this information we have marked may not be withheld under section 552.117(a)(1).<sup>2</sup>

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. Upon review, the information we have marked is excepted from disclosure under section 552.130. Thus, the city must withhold this information under section 552.130 of the Government Code. However, no portion of the remaining information consists of motor vehicle record information. Thus, no portion of the remaining information may be withheld under section 552.130.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, 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). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a) (defining access device). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. However, you have failed to demonstrate any of the remaining information consists of access device numbers. Thus, none of the remaining information may be withheld under section 552.136.

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

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<sup>2</sup>Regardless of the applicability of section 552.117, 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).

address is of a type specifically excluded by subsection (c).<sup>3</sup> *See id.* § 552.137(a)-(c). Accordingly, the city must withhold the e-mail address we have marked under section 552.137 unless the individual to whom the e-mail address belongs affirmatively consents to its release.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the date of birth we marked under section 552.102 of the Government Code. To the extent the individual at issue is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual is not currently a licensed peace officer but made a timely election under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city must also withhold the motor vehicle information we have marked under section 552.130 of the Government Code. The city must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The city must withhold the e-mail address of a member of the public, which we have marked, under section 552.137 of the Government Code unless the individual to whom the e-mail address belongs affirmatively consents to its release. The remaining information must be released.

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.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,



Daniel Olds  
Assistant Attorney General  
Open Records Division

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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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 539986

Enc. Submitted documents

c: Requestor  
(w/o enclosures)