



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 19, 2015

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2015-05310

Dear Ms. Quinn:

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# 556854 (Cedar Park Ref. No. C-15-050).

The City of Cedar Park (the "city") received a request for a specified internal investigation pertaining to a specified officer and the specified officer's civil service personnel file and termination records. You state the city will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, and certain information under section 552.130(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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 section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, the information at issue is within the scope of section 261.201 of the Family Code. You have not indicated the city’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.²

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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 met. *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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open*

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Records Decision No. 455 (1987). We also note a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we find some of the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

As noted above, you state you will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) 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, emergency contact information, social security number, 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. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone 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). We note some of the information you have marked, which we have marked for release, is not subject to section 552.117(a)(2) of the Government Code. With the exception of the information we have marked for release, the city must withhold the information you have marked, and the additional information we have marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. We further note one of the submitted audio recordings contains information that may be subject to section 552.117(a)(2). However, we are unable to determine from the information provided whether one of the individuals whose information is at issue is currently a licensed peace officer. To the extent this individual is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we have indicated under section 552.117(a)(2) of the Government Code. Conversely, if the individual at issue is not

a currently-licensed police officer as defined by article 2.12, the information we have indicated may not be withheld under section 552.117(a)(2) of the Government Code.³

If the individual at issue, whose information we have indicated, is not currently a licensed peace officer, then her personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 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). The city may only withhold the information at issue under section 552.117(a)(1) if the individual in question elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individual made a timely election under section 552.024, the city must withhold the information we have indicated under section 552.117(a)(1) of the Government Code. If the individual at issue did not make a timely election under section 552.024, the information at issue may not be withheld under section 552.117(a)(1) of the Government Code.

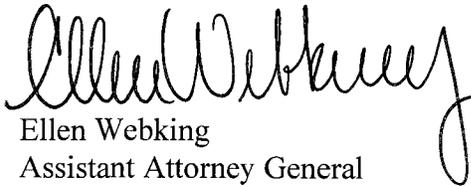
In summary, the city must withhold the information we have marked under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. With the exception of the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the city must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Further, if the individual whose information we have indicated in one of the submitted audio recordings is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we have indicated under section 552.117(a)(2) of the Government Code. If the individual at issue is not currently a licensed peace officer but timely requested confidentiality under section 552.024 of the Government Code, the city must withhold her information under section 552.117(a)(1) of the Government Code. The remaining information must be released.

³We note a governmental body may withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001); *see also* Gov't Code § 552.147(b).

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, 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 556854

Enc. Submitted documents

c: Requestor
(w/o enclosures)