



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 30, 2015

Ms. Brenda McDonald
Counsel for the Town of Addison
Messer, Rockefeller & Fort, PLLC
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2015-08359

Dear Ms. McDonald:

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# 564375.

The Town of Addison (the "town"), which you represent, received requests from different requestors for personnel information of a named individual. We understand the town has redacted social security numbers pursuant to section 552.147 of the Government Code.¹ The town indicates it will release some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.117, 552.130, and 552.137 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information.

The submitted information contains the Texas Commission on Law Enforcement ("commission") identification number of a peace officer.³ In Open Records Decision

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. *See* Gov't Code § 552.147(b).

²We understand the town to raise section 552.137 based on your markings.

³The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the commission website. Accordingly, we find the commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted commission identification number is not subject to the Act and the town is not required to release it to the requestor.⁴

We next note the information the town seeks to withhold under section 552.111, which consists of a background investigation report and candidate evaluation forms, is subject to section 552.022(a)(1) of the Government Code, which reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Section 552.111 of the Government Code is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the town may not withhold the information subject to section 552.022 under section 552.111. However, sections 552.101 and 552.1175 of the Government Code make information confidential under the Act.⁵ Accordingly, we will consider the applicability of these sections to the information subject to section 552.022, as well as the remaining documents.

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

⁴As we are able to make this determination, we need not address your argument against the disclosure of this information.

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Code § 552.101. This section encompasses section 1703.306 of the Occupations Code, which provides the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. The submitted documents contain polygraph information that is confidential under section 1703.306, and the requestor does not appear to have a right of access to the information under that section. Accordingly, the town must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.⁶

Section 552.101 of the Government Code also 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*

⁶As our ruling is dispositive, we do not address the town's other argument to withhold this information.

Foundation. *Id.* at 683. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). However, we note there is a legitimate public interest in an applicant's background and qualifications for government employment. *See* Open Records Decisions 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), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁷ However, we conclude the remaining information is not confidential under common-law privacy, and the town may not withhold it under section 552.101 on that ground.

The submitted information also includes DD-214 forms. Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a), (b). It appears the town obtained the submitted DD-214 forms after September 1, 2003. Therefore, the town must withhold the submitted DD-214 forms under section 552.140 of the Government Code.⁸

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home 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 section 552.024 or section 552.1175 of the Government Code.⁹ Gov't Code § 552.117(a)(2). However, section 552.117(a)(2) does not apply to applicants for employment. *See* Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). The town seeks to withhold information pertaining to the named individual and employees of the commission under section 552.117. The town informs us the named individual whose information is at issue was an applicant for employment with the town's police department who was not ultimately hired. The town also does not inform us any of the commission employees are current or

⁷As our ruling is dispositive, we do not address the town's other argument to withhold this information.

⁸As our ruling is dispositive, we do not address the town's other arguments to withhold this information.

⁹"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

former employees of the town. Therefore, we find the town has not established section 552.117 is applicable to any of the submitted information, and it may not withhold the information at issue on that ground. Nevertheless, section 552.1175 of the Government Code may be applicable to the applicant's information, as well as information pertaining to other individuals in the submitted documents.

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 of the Code of Criminal Procedure, and criminal investigators of the United States as described by article 2.122(a) of the Code of Criminal Procedure. *Id.* § 552.1175(a)(1), (7). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Thus, the town must withhold the information we have marked under section 552.1175 of the Government Code if (1) it pertains to individuals who are subject to section 552.1175(a); (2) the individuals elect to restrict access to this information in accordance with section 552.1175(b); and (3) for the marked cellular telephone numbers, the cellular telephone services were not provided to the individuals at issue at public expense. However, the town may not withhold the information marked under section 552.1175 it does not pertain to individuals who are subject to section 552.1175(a), the individuals did not elect to restrict access to this information in accordance with section 552.1175(b), or, for the marked cellular telephone numbers, the cellular telephone services were provided to the individuals at issue at public expense.

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. The town has redacted motor vehicle record information under section 552.130(c) of the Government Code.¹⁰ The town must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, the remaining information does not contain motor vehicle record information or a personal identification document issued by a Texas agency or another state or country or a local agency authorized to issue an identification document. Therefore, the town may not withhold the remaining information under section 552.130.

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

¹⁰Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 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).

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 id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The town does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the town must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

To conclude, the town is not required to release the submitted commission identification number. The town must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code and common-law privacy; (2) the submitted DD-214 forms under section 552.140 of the Government Code; (3) the information we have marked under section 552.130 of the Government Code; and (4) the information you have marked under section 552.137 of the Government Code. The town must also withhold the information we have marked under section 552.1175 of the Government Code if (1) it pertains to individuals who are subject to section 552.1175(a); (2) the individuals elect to restrict access to this information in accordance with section 552.1175(b); and (3) for the marked cellular telephone numbers, the cellular telephone services was not provided to the individuals at issue at public expense. The town must release the remaining responsive information.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 564375

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)