



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 1, 2015

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283

OR2015-08488

Dear Mr. Kopp:

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# 562033 (COSA File No. W062274).

The City of San Antonio (the "city") received a request for eighteen types of information pertaining to sworn officers of the city's police department.¹ You claim some of the requested information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.108, 552.117, and 552.136 of the Government Code.² We have considered your claims and reviewed the submitted information.

Initially, we note the requested information includes peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. In Open Records Decision 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 TCOLE identification number is a unique computer-generated

¹You inform us the requestor made the request for information in his individual, not official, capacity.

²Although you also raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the city holds in an employment capacity.

number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the requested TCOLE identification numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the requested TCOLE identification numbers are not subject to the Act and need not be released to the requestor.

Next, we note you have only submitted information pertaining to some of the categories of the request. To the extent information responsive to the remaining categories of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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. Section 552.101 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. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note, however, 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 of public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545.

You do not explain whether the listed association memberships reflect mandatory participation by the employees or are the employees' voluntary financial decisions. Thus, to the extent this information, a representative sample of which we have marked, reflects the employees' voluntary allocation of salary to optional investment, retirement, or other financial programs offered by the city, the city must withhold it under section 552.101 of the

Government Code in conjunction with common-law privacy. However, to the extent the information at issue reflects the employees' mandatory participation in the city's retirement program or benefits paid by the city, the information at issue is not confidential and may not be withheld on that basis.

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."³ Gov't Code § 552.102(a). The Texas Supreme Court has considered the applicability of section 552.102, and has 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, 348 (Tex. 2010). Upon review, we find the city must withhold the dates of birth in the submitted information, a representative sample of which we have marked, under section 552.102(a) of the Government Code.

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You argue release of some of the submitted information would interfere with law enforcement and jeopardize officer safety. However, upon review, we find you have failed

³The 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).

to demonstrate release of the information at issue would interfere with law enforcement. Thus, no portion of the submitted information may be withheld under section 552.108(b)(1).

Section 552.117(a)(2) of the Government Code exempts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). The submitted information contains officer home addresses and telephone numbers. Upon review, we find the city must withhold this information, a representative sample of information we have marked, under section 552.117(a)(2) of the Government Code.

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). You inform us the information you seek to withhold under section 552.136 consists of employee SAP numbers, which can be used by an employee to obtain certain goods, such as gasoline. Based on your representations, we agree the employee numbers at issue constitute access device numbers for purposes of section 552.136. Accordingly, the city must withhold the employee SAP numbers at issue under section 552.136 of the Government Code.

In summary, the requested TCOLE identification numbers are not subject to the Act and need not be released to the requestor. To the extent the marked association memberships reflect the employees’ voluntary allocation of salary to optional investment, retirement, and other financial programs offered by the city, the city must withhold the information, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the dates of birth, a representative sample of which we have marked, under section 552.102(a) of the Government Code. The city must withhold the officers’ home addresses and telephone numbers, a representative sample of which we have marked, under section 552.117(a)(2) of the Government Code. The city must withhold the employee SAP numbers at issue under section 552.136 of the Government Code. 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.

⁴Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure. Gov't Code 552.117(a)(2).

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,

A handwritten signature in cursive script that reads "Britni Fabian".

Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 562033

Enc. Submitted documents

c: Requestor
(w/o enclosures)