



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 8, 2015

Mr. Kenny Conyer
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-11171

Dear Mr. Conyer:

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# 566263 (ORR# 03-05219).

The City of Austin and the Austin Police Department (collectively, the "city") received a request for (1) all information pertaining to a named police officer and (2) all communications between members of the news media and employees and/or officials of the city, including a named individual, which mention the named police officer. The city states it has released or will release some of the requested information in accordance with a previous ruling. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). The city also states it will release some of the remaining requested information. The city informs us it will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision Nos. 670 (2001).¹ The city claims some of the submitted

¹We note 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* 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). 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. *Id.* § 552.147(b). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home

information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted representative sample of information.²

Initially, we note the requestor excluded from the request for information any records located in an employee's section 143.089(g) of the Local Government Code file. *See* Local Gov't Code § 143.089(g) ("A . . . police department may maintain a personnel file on a . . . police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a . . . police officer."); *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied). Accordingly, this information, which we have marked, is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.³

The city states the information it has indicated was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-08747 (2015). In Open Records Letter No. 2015-08747, we determined the city's police department must withhold certain information, including report numbers 2005-3052316 and 2008-255042, under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code and, with the exception of basic information, which must be released, the department may withhold report number 2009-2760752 under section 552.108(a)(2) of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed with regard to report number 2009-2760752. Accordingly, the city may continue to rely on Open Records Letter No. 2015-08747 as a previous determination and withhold or release report number 2009-2760752 in accordance with that ruling.⁴ *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). However, we note report

addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

³As our determination is dispositive, we need not address the city's argument against disclosure of this information.

⁴As our determination is dispositive, we need not address the city's argument against disclosure of this information.

numbers 2005-3052316 and 2008-255042 submitted in response the instant request are not held in the same capacity as they were when we addressed them in Open Records Letter No. 2015-08747; thus, we find the facts and circumstances on which the previous ruling was based have changed with regard to report numbers 2005-3052316 and 2008-255042. Therefore, we find the city may not rely on Open Records Letter No. 2015-08747 with regard to report numbers 2005-3052316 and 2008-255042. However, we will address the submitted arguments against the disclosure of this information and the remaining information that is not subject to the prior ruling.

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 city must withhold the dates of birth it has marked under section 552.102(a) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The city states report numbers 2005-3052316 and 2008-255042 relate to concluded cases that did not result in a conviction or deferred adjudication. Based on the city’s representation, we conclude section 552.108(a)(2) is applicable to the information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold report numbers 2005-3052316 and 2008-255042 under section 552.108(a)(2) of the Government Code.

Some of the basic information in one of the reports at issue is subject to section 552.101 of the Government Code in conjunction with common-law privacy. 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. This exception 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 concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). 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.

Section 552.117(a)(2) of the Government Code excepts 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 section 552.024 or 552.1175 of the Government Code.⁵ Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information it has marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code.

In summary, the city may continue to rely on Open Records Letter No. 2015-08747 as a previous determination and withhold or release report number 2009-2760752 in accordance with that ruling. The city (1) must withhold the dates of birth it has marked under section 552.102(a) of the Government Code; (2) with the exception of basic information, may withhold report numbers 2005-3052316 and 2008-255042 under section 552.108(a)(2) of the Government Code; (3) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) must withhold the information it has marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code. The city must release the remaining 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

⁵Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

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 black ink, appearing to read 'D. Wheelus', with a long horizontal flourish extending to the right.

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 566263

Enc. Submitted documents

c: Requestor
(w/o enclosures)