



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Mr. Robert Ray
Assistant City Attorney
City of Longview
P. O. Box 1952
Longview, Texas 75606

OR2015-11341

Dear Mr. Ray:

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# 566906.

The Longview Police Department (the "department") received a request for information pertaining to a named former employee of the department. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information protected by other statutes, such as chapter 55 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has previously determined that the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You inform us, and provide documentation showing, some of the submitted information is subject to an expunction order. Upon review, we find the information subject to the expunction order, which we have marked, is confidential under article 55.03 of the Code of Criminal Procedure, and the department must withhold it on that basis under section 552.101 of the Government Code.¹

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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 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. This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

individual and governmental body protected under common-law privacy). Upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.²

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 department must withhold the date of birth you have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 sections 552.024 and 552.1175 of the Government Code. *See* 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. If the named former employee is currently a licensed peace officer, then the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code. However, if the named former employee is not currently a licensed peace officer, then the information you have marked may not be withheld under section 552.117(a)(2).

If the named former employee is not a currently licensed peace officer, his personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) protects from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former

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

employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the named former employee timely requested confidentiality under section 552.024 of the Government Code, then the department must withhold the information you have marked under section 552.117(a)(1) of the Government Code. Conversely, if the named former employee did not timely request confidentiality under section 552.024, then the department may not withhold this information under section 552.117(a)(1).

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. In the event the former employee’s social security number is not excepted from disclosure under section 552.117, the department may withhold the social security number you have marked under section 552.147.³

In summary, the department must withhold the information marked under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The marked date of birth must be withheld under section 552.102(a) of the Government Code. The department must withhold the information you have marked under section 552.117(a)(2) of the Government Code, if the named former employee is a licensed peace officer. However, if the named former employee is not a currently licensed peace officer, the department must withhold the information you have marked under section 552.117(a)(1) of the Government Code if the named former employee timely requested confidentiality under section 552.024 of the Government Code. In the event the former employee’s social security number is not excepted from disclosure under 552.117, the department may withhold social security number under section 552.147 of the Government Code. The remaining submitted information must be released.

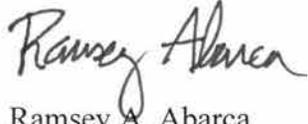
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

³We note 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.

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 that reads "Ramsey Abarca". The signature is written in a cursive style with a large initial 'R'.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 566906

Enc. Submitted documents

c: Requestor
(w/o enclosures)