



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2015

Ms. Andrea D. Russell
Counsel for the City of Benbrook
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2015-15442

Dear Ms. Russell:

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# 573260.

The City of Benbrook (the "city"), which you represent, received a request for information pertaining to a named individual. You state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code, personal e-mail addresses subject to section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009), and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information in Exhibit B was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-12736 (2015). In Open Records Letter No. 2015-12736, we determined the city must withhold the information we marked under section 552.101 of the Government Code

¹Section 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. 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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public, under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion. *See* ORD 684. 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. Gov't Code § 552.147(b).

in conjunction with common-law privacy, must withhold the information we marked under section 552.1175 of the Government Code, and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the city must continue to rely on Open Records Letter No. 2015-12736 as a previous determination and withhold or release the identical information in accordance with that ruling.² See Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the city's arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2015-12736.

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 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. Although we have concluded a compilation of a private individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public, criminal history information compiled by a law enforcement agency in the process of hiring a peace officer is a matter of legitimate public interest. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Upon review, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the information at issue under section 552.101 of the Government Code on this basis.

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. See Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. See Open Records Decision No. 506 at 5-7 (1988). You inform us the named peace officer elected to restrict access to his

²As we are able to make this determination, we need not address your arguments against disclosure of the information in Exhibit B.

information in accordance with section 552.1175(b). Accordingly, the city must withhold the information we have marked under section 552.1175 of the Government Code.

We note the remaining information contains information pertaining to a peace officer from another law enforcement agency that may be subject to section 552.1175. Thus, to the extent the information we have marked relates to a currently-licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, the city may withhold the cellular telephone number we have marked only if the cellular telephone service is not paid for by a governmental body. If the individual whose information is at issue is not a currently-licensed peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the information at issue may not be withheld under section 552.1175 of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2015-12736 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must withhold the information pertaining to the named peace officer, which we have marked, under section 552.1175 of the Government Code. To the extent the information we have marked relates to a currently-licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 573260

Enc. Submitted documents

c: Requestor
(w/o enclosures)