



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 29, 2015

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

OR2015-15465

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# 573248.

The Euless Police Department (the "department"), which you represent, received a request for information pertaining to a named individual. You state the department will provide some information to the requestor. You state the department will redact certain information pursuant to sections 552.130(c) and 552.147(b) of the Government Code, and Open Records Decision No. 684 (2009).<sup>1</sup> You claim portions of the submitted information are excepted

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<sup>1</sup>Section 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). 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. *See id.* § 552.147(b). Open Records Decision No. 684 serves as 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, and a DD-214 form under section 552.140 of the Government Code, without the necessity of requesting a decision from this office.

from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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. 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 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 individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked satisfies 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.

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). Thus, under the *Texas Comptroller* decision, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by the employer in an employment context. To the extent the marked date of birth pertains to a current or former department employee, the department must withhold it under section 552.102(a) of the Government Code. However, to the extent the marked date of birth does not pertain to a current or former department employee, the department may not withhold it under section 552.102(a).

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

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<sup>2</sup>Although you do not cite to section 552.117 of the Government Code in your brief, we understand you to raise this exception based on your markings.

and 552.1175 of the Government Code.<sup>3</sup> 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. We note the remaining information contains information pertaining to a peace officer who may be a current or former employee of the department. Therefore, to the extent the information you have marked pertains to a peace officer currently or formerly employed by the department, the department must withhold the information you have marked under section 552.117(a)(2) of the Government Code.

In the event the individual whose personal information is at issue is not currently nor was formerly employed by the department, we note section 552.1175(b) of the Government Code provides in part the following:

Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(b). The remaining information may contain information pertaining to a peace officer not currently or formerly employed by the department. Therefore, if the individual whose personal information is at issue is a currently-licensed peace officer not employed by the department who elects to restrict access to the information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code. If the individual at issue is not a currently-licensed peace officer or did not elect to restrict access to the information, the department may not withhold the marked information on this basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the marked date of birth pertains to a current or former department employee the department must withhold it 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

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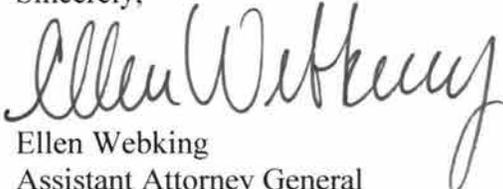
<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the Government Code, provided the individual whose personal information is at issue is a currently-licensed peace officer currently or formerly employed by the department. The department must withhold the information we have marked under section 552.1175 of the Government Code if the individual whose personal information is at issue is a currently-licensed peace officer not currently or formerly employed by the department who elects to restrict access to the information in accordance with section 552.1175(b). 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.

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](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 "Ellen Webking". The signature is written in black ink and is positioned to the right of the typed name.

Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 573248

Enc. Submitted documents

c: Requestor  
(w/o enclosures)