



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2015

Mr. David T. Ritter
Counsel for the City of Oak Point
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-16435

Dear Mr. Ritter:

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# 575191 (OOR# 2015-05-047).

The City of Oak Point (the "city"), which you represent, received a request for information pertaining to named employees. The city states it will withhold motor vehicle record information under section 552.130 of the Government Code and social security numbers under section 552.147 of the Government Code.¹ The city claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.1175, 552.136, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, the city informs us some of the submitted information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release this

¹Section 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 under the Act. *See id.* § 552.147(b).

information in response to this request. However, we note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Upon review, we find some of the information at issue is responsive to the request. Accordingly, we will address your arguments to withhold this information under the Act.

The submitted information also contains the Texas Commission on Law Enforcement (“commission”) identification numbers of peace officers.² 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 commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner’s electronic database, and may be used as an access device number on the commission website. Accordingly, we find the commission identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the submitted commission identification numbers are not subject to the Act and the city is not required to release them to the requestor.

We next note some of the submitted information, which we have marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-11281 (2010). In that ruling we determined the city must withhold certain information under various exceptions under the Act, but must release the remaining information.³ Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly

²The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

³Specifically, we determined the following in Open Records Letter No. 2010-11281: (1) the city must withhold some information under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, federal laws and regulations governing the employment verification system, subtitle B of title 3 of the Occupations Code (the Medical Practices Act), section 1701.306 of the Occupations Code, section 560.003 of the Government Code, and common-law privacy; (2) the city may withhold certain information under section 552.108(a)(1) of the Government Code; (3) the city must withhold certain information under section 552.117(a)(2) of the Government Code if the employees at issue were currently licensed peace officers or under section 552.117(a)(1) of the Government Code if the timely elected to withhold that information, but the cellular telephone number may only be withheld if the cellular telephone service was paid for with the employee’s own funds; (4) the city must withhold certain information under sections 552.130, and 552.136 of the Government Code; (5) the city must withhold e-mail addresses under section 552.137 of the Government Code, unless the city has received consent for their release; and (6) and the city must release the remaining information.

prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. You now assert key numbers within this information are confidential under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"), and under section 552.136 of the Government Code. Because sections 552.101 and 552.136 of the Government Code make information confidential under the Act, we will address your arguments under these sections for the information. We also note there has been a change in the law on which the prior ruling was based regarding the confidentiality of an employee's date of birth. Therefore, we must also address whether the date of birth in the previously-addressed information is excepted from release under the Act. However, we have no indication the law, facts, or circumstances on which the prior ruling was based have changed regarding the remaining responsive information at issue. Accordingly, the city must continue to rely on Open Records Letter No. 2010-11281 as a previous determination and withhold or release the remaining identical responsive information in accordance with that ruling.⁴ We will address the city's arguments against the release of the submitted responsive information that is not encompassed by Open Records Letter No. 2010-11281.

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 section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

⁴*See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Occ. Code § 1701.454. The submitted information contains an F-5 Separation of Licensee form that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The submitted F-5 form does not reflect the named officer to whom this form applies was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 form in its entirety under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.⁵

Section 552.101 of the Government Code also encompasses section 418.182(a) of the Government Code, which provides in relevant part, “information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.” Gov’t Code § 418.182(a). The fact that information may be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert each key number you have marked “consists of ‘information’ under [s]ection 418.182 that should be retained under [section 552.101.]” However, upon review we conclude you have not provided any arguments establishing the key numbers relate to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See id.* Accordingly, you have failed to establish the key numbers are confidential under section 418.182, and the city may not withhold them under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses the informer’s privilege, which has long been recognized by Texas courts. *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer’s privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer’s identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer’s privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law

⁵As our ruling is dispositive, we do not address the city’s other arguments to withhold this information.

enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990).

The city seeks to withhold, pursuant to the informer’s privilege, the name of an individual who made a request for information under the Act because the individual “has provided the [c]ity with information regarding potential actual violations of law.” However, upon review we find the city has failed to demonstrate the informer’s privilege applies to this information. Accordingly, the city may not withhold the information you have marked under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, see Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find some of the remaining information, which 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.⁶ However, we conclude the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

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

⁶As our ruling is dispositive, we do not address the city’s other arguments to withhold this information.

personal privacy.”⁷ Gov’t Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) exempts 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). The city must withhold the dates of birth you have marked under section 552.102(a) of the Government Code, including the marked date of birth within the information that was the subject of Open Records Letter No. 2010-11281.⁸

Section 552.108 of the Government Code provides, in pertinent part, the following:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov’t Code § 552.108(b)(1)-(2). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) exempts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code 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

⁷The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

⁸As our ruling is dispositive, we do not address the city’s other arguments to withhold this information.

protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). A governmental body claiming subsection 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. However, section 552.108 is generally not applicable to a law enforcement agency's personnel records. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) not applicable to documents obtained by police constable for purpose of evaluating applicant's fitness for employment); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990) (predecessor to section 552.108(b) not applicable to employment information in police officer's file).

You seek to withhold the name of an individual who previously made a request under the Act under subsections 552.108(b)(1) and 552.108(b)(2) because it regards "a potential area in which law enforcement operational procedures have been, or may be compromised." However, upon review we find you have not established either that release of this information would interfere with the detection, investigation, or prosecution of crime, or that it pertains to an investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, the city may not withhold this information under either subsection 552.108(b)(1) or 552.108(b)(2) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts 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. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The submitted documents include elections by the employees at issue. Therefore, with the exception of the information we have marked for release, the city must withhold the remaining information you have marked, as well as the information we have marked, under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone numbers marked under section 552.117(a)(1) if the cellular telephone service was not provided to the employees at issue at public expense. We find none of the

remaining information is subject to section 552.117 of the Government Code. Accordingly, the city may not withhold any of the remaining information on that 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*. The remaining documents contain information pertaining to peace officers who do not work for the city. The city must withhold the information we have marked under section 552.1175 if the individuals at issue are licensed peace officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the city may not withhold this information under section 552.1175 if the individuals either are not currently-licensed peace officers or do not elect to restrict access to this information in accordance with section 552.1175(b). We find none of the remaining information is subject to section 552.1175 of the Government Code. Accordingly, the city may not withhold any of the remaining information on that basis.

Section 552.136 of the Government Code provides, in part, the following:

(a) In this section, "access device" means 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:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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(a)-(b). The city must withhold the account numbers we have marked in the remaining documents under section 552.136 of the Government Code. However, we find the city has failed to explain how the remaining information you have marked under section 552.136, including the marked key numbers, consists of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* § 552.136(a). Accordingly, the city may not withhold any of the remaining information on that ground.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The city does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses we have marked in the remaining documents under section 552.137 of the Government Code. However, the remaining e-mail addresses you seek to withhold do not consist of e-mail addresses of members of the public. Therefore, the city may not withhold any of the remaining information under section 552.137.

To conclude, the city is not required to release the submitted commission identification numbers. For the responsive information that was subject to Open Records Letter No. 2010-11281, the city must withhold or release the identical information in accordance with that ruling, with the exception of the marked date of birth, which the city must withhold under section 552.102 of the Government Code. For the responsive information that was not subject to Open Records Letter No. 2010-11281, the city must withhold the following, with the exception of the information we have marked for release: (1) the submitted F-5 form in its entirety under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the dates of birth you have marked under section 552.102(a) of the Government Code; (4) the information marked under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone numbers marked under section 552.117(a)(1) if the cellular telephone service was not provided to the employees at issue at public expense; (5) the information we have marked under section 552.1175 of the Government Code if the individuals at issue are licensed peace officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code; and (6) the information we have marked under sections 552.136 and 552.137 of the Government Code. The city must release the remaining responsive 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 575191

Enc. Submitted documents

c: Requestor
(w/o enclosures)