



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2015

Ms. Bobbi Kacz
City Attorney
City of Alvin
216 West Sealy Street
Alvin, Texas 77511

OR2015-17243

Dear Ms. Kacz:

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# 576812 (Ref.# CA-15-0059).

The City of Alvin (the "city") received a request for the disciplinary file of a named police officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.130, 552.137, 552.147, and 552.152 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. 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. 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 marked and indicated satisfies the standard articulated by the Texas Supreme

Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.¹ The city has failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, the city may not withhold any of the remaining information under section 552.101 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). Upon review, we find the city must withhold the employee’s date of birth we have marked under section 552.102(a) of the Government Code. However, we find the city has failed to demonstrate the applicability of section 552.102 to any of the remaining information. Therefore, the city may not withhold any of the remaining information under section 552.102 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n 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 . . . if release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not

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

indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You state some of the information at issue relates to off-duty officers and reveals the occasions on which certain businesses take extra security measures. You assert that if released, the information would permit private citizens to anticipate weaknesses in the department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this state. Based on your representations and our review, we agree release of some of the information at issue would interfere with law enforcement and crime prevention. Therefore, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate how the release of the remaining information at issue would interfere with law enforcement and crime prevention. Accordingly, the city may not withhold any of the remaining information under section 552.108(b)(1).

Section 552.108 of the Government Code also provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(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:

...

(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(a)(2), (b)(2). Subsections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. 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); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982). We note the information you seek to withhold reflects it was generated as part of internal investigations conducted by the city's police department that were purely administrative in nature. You do not provide any arguments explaining how the internal investigations resulted in criminal investigations or prosecutions. Therefore, you have failed to demonstrate the applicability of subsection 552.108(a)(2) or subsection 552.108(b)(2) to any portion of the remaining information, and the city may not withhold this information on that basis.

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. Upon review, we conclude some of the remaining information is confidential under section 552.117(a)(2) of the Government Code. Although you seek to withhold the submitted audio recording in its entirety because the city lacks the technological capability to redact the confidential information in the audio recording, we find that because the city had the ability to copy the submitted audio recording for our review, we believe the city has the capability to produce a copy of only the non-confidential portions of the audio recording. Accordingly, the city must withhold the information we have marked and indicated under section 552.117(a)(2). However, we find you have failed to demonstrate any of the remaining information at issue consists of information that is confidential under section 552.117. Therefore, no portion of the remaining information may be withheld on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the city must withhold the

information you have marked, and the information we have marked, under section 552.130 of the Government Code. In addition, we find the submitted video recording contains motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. You assert the city does not have the technological capability to redact the motor vehicle record information from the video recording at issue. Therefore, we find the department must withhold the submitted video recording in its entirety under section 552.130 of the Government Code.

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). The e-mail address you have marked is not subject to subsection (c), and there is no indication the owner of the e-mail address has consented to release of his e-mail address. Thus, we find the city must withhold the e-mail address you have marked under section 552.137 of the Government Code.

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. *Id.* § 552.147. Upon review, we find the city has failed to demonstrate how any of the remaining information consists of the social security number of a living individual and thus, none of the remaining information may be withheld on that basis.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 [of the Government Code] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You state some of the information at issue could endanger the life or physical safety of law enforcement personnel. However, upon review, we find you have failed to demonstrate how the release of any of the remaining information would subject employees or officers to a substantial threat of physical harm. Therefore, the city may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the employee’s date of birth we have marked under section 552.102(a) of the Government Code. The city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The city must withhold the information we have marked and

indicated under section 552.117(a)(2) of the Government Code. The city must withhold the information we have marked and the entire submitted video recording under section 552.130 of the Government Code. The city must withhold the e-mail address you have marked under section 552.137 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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

Ref: ID# 576812

Enc. Submitted documents

c: Requestor
(w/o enclosures)