



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2015

Mr. Luke A. Cochran
Counsel for the City of Brenham
Law Office of Cary L. Bovey, PLLC
2251 Double Creek Drive, Suite 204
Round Rock, Texas 78664

OR2015-20356

Dear Mr. Cochran:

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# 581686.

The City of Brenham (the "city"), which you represent, received two requests from different requestors for personnel information related to a named individual. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 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, including the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* Upon review, we find the information you have marked consists of medical records. Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA.¹

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."² 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). Accordingly, the city must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.³

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 demonstrated. *See 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

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

²The 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).*

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we conclude the information we have marked meets 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. However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 or section 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). We note section 552.117(a)(2) is applicable only to information a governmental body maintains in its capacity as a peace officer's employer. We also note section 552.117 is not applicable to information relating to a peace officer employed by a governmental body other than the one that received the request for information regarding the officer. *See* Open Records Decision No. 674 at 4 (2001) (governmental body is normally obliged under Gov't Code § 552.117 to protect only information pertaining to employees and officials of that governmental body). In this instance, the submitted information relates to an individual who was formerly employed as a member of the city's fire department. You inform us the individual is now a licensed peace officer employed by the Texas Department of Public Safety ("DPS"). Based on your representations and our review, we find the submitted information is not maintained by the city as a licensed peace officer's employer. Therefore, the city may not withhold any portion of the submitted information under section 552.117(a)(2) of the Government Code.

Nevertheless, the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to

⁴"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

cellular telephone numbers paid for by governmental body and intended for official use). 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 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 employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the former employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body. Conversely, to the extent the employee at issue did not timely request confidentiality under section 552.024, then the city may not withhold the information at issue under section 552.117(a)(1).

To the extent the former employee whose information is at issue did not timely request confidentiality under section 552.024 of the Government Code, the information at issue may be subject to section 552.1175 of the Government Code, which 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 to peace officers as defined by article 2.12 of the 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* ORD 506 at 5-6. You state the former employee whose information at issue is now a licensed peace officer with DPS. Accordingly, we find the city holds personal information pertaining to a currently-licensed peace officer in a capacity other than as that peace officer's employer. Thus, the city must withhold the information you have marked, and the additional information we have marked, under section 552.1175 of the Government Code, if the individual elects to restrict access to this information in accordance with section 552.1175(b); however, the city may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body. However, if the individual does not elect to restrict access to this information in accordance with section 552.1175(b), then the city may not withhold this information under section 552.1175 of the Government Code.

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* Gov't Code § 552.130. The city must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the city must withhold the insurance policy number you have marked under section 552.136 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 at issue is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

To the extent the submitted social security number is not excepted from disclosure under section 552.117(a)(1) or section 552.1175 of the Government Code, you claim it is excepted under section 552.147 of the Government Code. Section 552.147 provides “the social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Accordingly, to the extent the submitted social security number is not excepted from disclosure under section 552.117(a)(1) or section 552.1175 of the Government Code, the city may withhold the submitted social security number under section 552.147(a) of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the MPA. The city must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. The city 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 former employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code; however, the city may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body. To the extent the former employee whose information is at issue did not timely request confidentiality under section 552.024 of the Government Code, then the city must withhold the information you have marked, and the additional information we have marked, under section 552.1175 of the Government Code, if the individual elects to restrict access to this information in accordance with section 552.1175(b); however, the city may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body. The city must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The city must withhold the insurance policy number you have marked under section 552.136 of the Government Code. The city must withhold the personal e-mail address we have marked under section 552.137 of the

Government Code, unless the owner affirmatively consents to its public disclosure. To the extent the submitted social security number is not excepted from disclosure under section 552.117(a)(1) or section 552.1175 of the Government Code, the city may withhold the submitted social security number under section 552.147(a) 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,

A handwritten signature in black ink, appearing to read 'Tim Neal', written in a cursive style.

Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 581686

Enc. Submitted documents

c: Requestors
(w/o enclosures)