



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2015

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2015-25007

Dear Ms. Quinn:

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# 589510 (Reference Number 15-1174).

The Cedar Park Police Department (the "department") received a request for information pertaining to a specified arrest, the personnel file of a named police officer, and documents related to any lawsuit brought against that officer.¹ The department states it will make some of the requested information available to the requestor, but claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the department did not submit requested information related to any lawsuit brought against the named officer. We assume, to the extent this information existed when the department received the request for information, the department has released it to the

¹The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

requestor. If not, then the department must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). The department states Exhibit C pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code.

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. In addition, this office has found information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we find some of the information in Exhibit E, which 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 552.117(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.² Gov't Code § 552.117(a)(2). The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, we conclude section 552.117(a)(2) is not applicable to the remaining information, and the department may not withhold it on that ground.

²"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

Section 552.1175 of the Government Code may be applicable to some of the submitted information.³ Section 552.1175 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; *see also* Crim. Pro. Code art. 2.12(7) (peace officer includes member of arson investigating unit commissioned by city). We note section 552.1175 is also applicable to personal cellular telephone and pager numbers, provided the cellular telephone and pager service is not paid by a governmental body. *See* ORD 506 at 5-6. The department must withhold the cellular telephone and pager numbers we have marked under section 552.1175 if (1) the individual at issue is a licensed peace officer, (2) the individual elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and (3) the cellular telephone and pager services are not paid by a governmental body. However, the department may not withhold this information under section 552.1175 if (1) the individual at issue is not a licensed peace officer, (2) the individual does not elect to restrict access to this information in accordance with section 552.1175(b), or (3) the cellular telephone and pager services are paid by a governmental body.

To conclude, the department may withhold Exhibit C under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and under section 552.117(a)(2) of the Government Code. The department must withhold the cellular telephone and pager numbers we have marked under section 552.1175 if (1) the individual at issue is a licensed peace officer, (2) the individual elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and (3) the cellular telephone and pager services are not paid by a governmental body. The department must release the remaining information.⁴

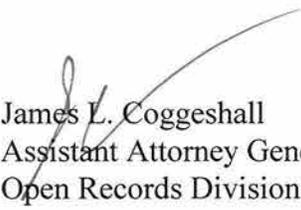
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³The 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).

⁴Because the requestor has a special right of access to some of the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

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/sb

Ref: ID# 589510

Enc. Submitted documents

c: Requestor
(w/o enclosures)