



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2015

Mr. Les Moore
Police Legal Adviser
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2015-25698

Dear Mr. Moore:

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# 590079.

The City of Irving and the Irving Police Department (collectively the "city") received several requests for (1) police records pertaining to a specified incident and (2) internal correspondence pertaining to the specified incident.¹ One of the requestors also seeks the personnel files of certain officers involved in the specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information, a portion of which consists of a representative sample.³

¹We note the city has withdrawn its request for a ruling for COI ID PI-15-1405 because you inform us the requestor has clarified the request for information, and you have released the information subject to the more narrowly tailored request.

²Although you also raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the city holds in an employment capacity.

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

We have also received comments from one of the requestors. *See* Gov't Code § 552.304 (permitting a person to submit written comments to attorney general during open records ruling process).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). A portion of the information at issue involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.⁴

The submitted information contains a W-4 tax form. Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Employee W-2 and W-4 tax forms are excepted

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

from disclosure by section 6103(a). Open Records Decision No. 600 (1992). Accordingly, the city must withhold the submitted W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.⁵

The submitted information also contains an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, the city must withhold the submitted I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

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. Additionally, this office has found certain personal financial 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, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 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). We also note the submitted information contains dates of birth of public citizens. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure. *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold this marked information and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.⁶

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); see *City of Fort Worth v. Cornyn*, 86 S.W. 3d at 327 (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. See, e.g., Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. See, e.g., Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The city explains that some of the submitted information details procedures to be followed in the event of a bomb threat as well as investigative processes and informant information relating to specific bomb threats and the investigation of suspects in a bomb threat. Upon review, we find the city has demonstrated release of the information at issue would interfere with law enforcement. Thus, the city may withhold the information at issue, which we have marked, under section 552.108(b)(1) of the Government Code.⁷

We note the remaining information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.⁸ Section 552.102(a) 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 has 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.*

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁷As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁸The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Comptroller of Pub. Accounts v. Attorney Gen. of Tex., 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.⁹

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.¹⁰ Gov't Code § 552.117(a)(2). 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). Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the cellular telephone numbers at issue under section 552.117 if the cellular telephone service was not provided to the employee at issue at public expense. However, we find none of the remaining information you seek to withhold consists of the home address, home telephone number, emergency contact information, social security number, or family member information of a peace officer. Therefore, none of the remaining information at issue may be withheld under section 552.117(a)(2).

Some of the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

⁹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

¹⁰"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

Gov't Code § 552.130(a). The city must withhold the motor vehicle record information we have marked 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). 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). You do not inform us a member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail address we have marked under section 552.137.

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 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 release of the remaining submitted personnel information could bring harm to the officer at issue. Upon review, we find you have failed to demonstrate the release of the information at issue would subject any individual to a substantial threat of harm. Accordingly, none of the remaining submitted information may be withheld under section 552.152 of the Government Code.

In summary, the city must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) the submitted W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (3) the submitted I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (4) the information we have marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (5) the information we have marked under sections 552.102(a), 552.130, and 552.137 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 also withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the cellular telephone numbers marked under section 552.117 if the cellular telephone service was not provided to the employee at issue at public expense. 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 590079

Enc. Submitted documents

cc: 7 Requestors
(w/o enclosures)

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