



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 14, 2015

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

OR2015-26112

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# 590844 (City ID# 15-17330).

The City of McKinney (the "city"), which you represent, received a request for personnel information of a named former city employee. The city has released some information and claims the remaining information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions the city claims 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, such as section 1324a of title 8 of the United States Code. Section 1324a provides an Employment Eligibility Verification Form I-9 and "any information contained in or appended to such 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. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). We conclude the city must withhold the I-9 form and its attachments we marked under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.<sup>1</sup>

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<sup>1</sup>As our ruling is dispositive, we need not address the city's other arguments against disclosure of this information.

Section 552.101 also encompasses the federal Fair Credit Reporting Act (the “FCRA”), 15 U.S.C. §§ 1681 *et seq.* Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person the consumer reporting agency has reason to believe intends to use the information for employment purposes. *Id.* § 1681b(a)(3)(B). A “consumer report” is any communication of information by a consumer agency bearing on a person’s credit worthiness, credit standing, character, or personal characteristics, and includes a criminal history report. *Id.* § 1681a(d) (defining “consumer report”); *see* [www.ftc.gov/bcp/online/pubs/buspubs/credempl.shtm](http://www.ftc.gov/bcp/online/pubs/buspubs/credempl.shtm) (discussing Federal Trade Commission position that “consumer report” includes criminal histories). Section 1681b further provides “[a] person shall not use or obtain a consumer report for any purpose unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.” *Id.* § 1681b(f). Section 1681e provides for the maintenance of procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *Id.* § 1681e(a); *see* Open Records Decision No. 373 at 2 (1983) (federal law strictly limits distribution of consumer credit reports by credit reporting agencies). We have marked the consumer report a consumer agency furnished to the city for purposes of section 1681b of the FCRA. The FCRA does not permit the disclosure of information in a consumer report for the purpose of responding to a request for information under the Act. Therefore, the city must withhold the report we marked under section 552.101 of the Government Code in conjunction with the FCRA.<sup>2</sup>

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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. The types of information considered highly intimate or embarrassing by the supreme court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the city failed to demonstrate the information we marked for release is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold the information we marked for release on this basis.

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

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<sup>2</sup>As our ruling is dispositive, we need not address the city’s other arguments against disclosure of this information.

personal privacy.”<sup>3</sup> 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). Thus, except for the information we marked for release, the city must withhold the former employee’s date of birth the city and we marked under section 552.102(a).

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 this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). Gov’t Code §§ 552.117(a)(1), .024. We note 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 cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of 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)*. The city submitted information showing the former employee elected to withhold his personal information. Thus, pursuant to section 552.117(a)(1), the city must withhold the home address, home and cellular telephone numbers, and family member information of the former employee that the city and we marked.<sup>4</sup> However, it appears the city may have paid for this person’s cellular telephone service. In that instance, the city may not withhold the marked cellular telephone number; otherwise, the city must withhold it pursuant to section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). We conclude, except for the information we marked for release, the city must withhold the motor vehicle record information it marked under section 552.130.

Section 552.136 of the Government Code states, “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(b); *see also id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. *See Open*

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

<sup>4</sup>Because section 552.117(a)(1) is dispositive, we do not address the city’s section 552.147 assertion.

Records Decision No. 684 (2009). Accordingly, the city must withhold the access device numbers it and we marked under section 552.136.

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). Gov’t Code § 552.137(a)-(c). Upon review, we find the city must withhold the personal e-mail address it marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the city must withhold the following information under section 552.101 of the Government Code: 1) the I-9 form and its attachments we marked in conjunction with section 1324a of title 8 of the United States Code and 2) the marked information in conjunction with the FCRA. The city must also withhold the following information: 1) the marked date of birth under section 552.102(a) of the Government Code; 2) the marked former employee’s personal information under section 552.117(a)(1) of the Government Code, including the cellular telephone number provided the city did not pay for its service; 3) the marked motor vehicle record information under section 552.130 of the Government Code; 4) the marked access device numbers under section 552.136 of the Government Code; and 5) the personal e-mail address it marked under section 552.137 of the Government Code, unless the owner consents to its release. 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](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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sb

Ref: ID# 590844

Enc. Submitted documents

c: Requestor  
(w/o enclosures)