



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 4, 2016

Mr. Brian J. Knowles
Counsel for City of Hutto
Sheets and Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664

OR2016-07440

Dear Mr. Knowles:

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# 604346.

The City of Hutto (the "city"), which you represent, received a request for information pertaining to a specified police officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 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 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement ("TCOLE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to the [TCOLE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. You assert the submitted F-5 report is subject to section 1701.454. We understand the officer at issue neither resigned nor was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 report under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations 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. 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 portions of the submitted information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.¹ However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Upon review, we find the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code.²

In summary, the city must withhold the F-5 report under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information marked

¹As our ruling is dispositive, we do not address your other arguments to withhold this information.

²As our ruling is dispositive, we do not address your other argument to withhold this information.

under section 552.117(a)(2) of the Government Code. The remaining information must be released.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 604346

Enc. Submitted documents

c: Requestor
(w/o enclosures)