



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2016

Ms. Heather Silver
Assistant City Attorney
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2016-10105

Dear Ms. Silver:

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# 608348.

The City of Dallas (the "city") received a request for any grievance, complaint, notice, or charge received from a member of the city's Fire-Rescue Department alleging or notifying the city or the city's Fire-Rescue Department of sexual harassment, discrimination based on sex, or a hostile work environment based on sex during a specified time period. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-06219 (2016). In Open Records Letter No. 2016-06219, we determined, in relevant part, (1) the city must withhold the information we marked under section 552.101 of the Government Code

¹We 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.

in conjunction with common-law privacy; and (2) the city must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the city must continue to rely on Open Records Letter No. 2016-06219 as a previous determination and withhold or release the identical information in accordance with that ruling.² See Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the city's arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2016-06219.

Next, we note the remaining information includes a court-filed document subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). You seek to withhold portions of the court-filed document, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public court records. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the court-filed document we have marked may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, as section 552.117 of the Government Code can make information confidential for purposes of section 552.022(a)(17), we will consider your argument under section 552.117 for the submitted court-filed document. Further, we will consider your arguments against disclosure for the remaining 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 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 common-law right of privacy protects the identifying information of a complainant in certain situations based on the facts of the case. See Open Records Decision No. 394 (1983); see also Open Records Decision No. 339 (1983) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987).

²As we are able to make this determination, we need not address your argument against disclosure of this information.

Upon review, we find the information we have marked satisfies the standards 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 the city has not demonstrated any portion of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information at issue may not be withheld under section 552.101 in conjunction with common-law privacy.

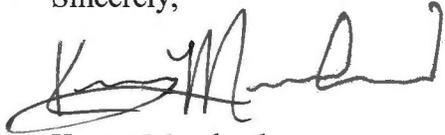
Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). 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 or official 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 or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the individuals whose information is at issue did not make a timely election under section 552.024, the city may not withhold the information we have marked under section 552.117(a)(1) of the Government Code. Further, we find no portion of the remaining information at issue is subject to section 552.117(a)(1) of the Government Code, and the city may not withhold any of the remaining information at issue on that basis.

In summary, the city must continue to rely on Open Records Letter No. 2016-06219 as a previous determination and withhold or release the identical information in accordance with that ruling. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) 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 'Kenny Moreland', written over a horizontal line.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 608348

Enc. Submitted documents

c: Requestor
(w/o enclosures)