



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2016

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

OR2016-12409

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# 612853 (City ID# G244-031016).

The City of McKinney (the "city"), which you represent, received a request for information regarding the application, selection, and hiring process for a specified position. You state you will redact information pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officers' TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.²

Section 552.101 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. 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

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

disclosure.³ *Tex. 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. Thus, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.⁴

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). However, section 552.117(a)(2) generally does not apply to applicants for employment. *See* Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). In this instance, we are unable to determine whether the individuals whose information is at issue are currently employed by the city as licensed peace officers as defined by article 2.12; therefore, we must rule conditionally. If the individuals at issue are currently employed by the city as licensed peace officers as defined by article 2.12, then the city must withhold the information we have marked and some of the information you have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. Conversely, if the individuals at issue are not currently employed by the city as licensed peace officers as defined by article 2.12, the city may not withhold this information under section 552.117(a)(2) of the Government Code. Regardless, the information we have marked for release is not subject to section 552.117(a)(2) and it may not be withheld on that basis.

If the individuals at issue are not currently licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of

³Section 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).

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

a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) of the Government Code 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 id.* § 552.117(a)(1). As previously noted, 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* ORD 506 at 5-6. We note the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117(a)(1) (providing that employees of governmental entities may protect certain personal information in the hands of their employer); ORD 455 (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). 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 only be withheld under section 552.117(a)(1) on behalf of a current or former employee 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 or not later than the 14th day after the date on which the employee began employment with the city. *See* Gov't Code § 552.024(b). 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. Upon review, we conclude that, if the individuals at issue are not currently employed by the city as licensed peace officers as defined by article 2.12, to the extent the individuals at issue were employed by the city and timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information we have marked and some of the information you have marked under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the individuals were not employed by the city or if the individuals at issue did not timely request confidentiality under section 552.024, the city may not withhold this information under section 552.117(a)(1). Regardless, the information we have marked for release is not subject to section 552.117(a)(1) and it may not be withheld on that basis.

If the individuals at issue are not currently employed by the city, their information may be protected by section 552.1175 of the Government Code. 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. *Id.* § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number,

unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-6. Thus, if the individuals at issue are not currently employed by the city, to the extent the individuals at issue are licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), then the city must withhold the information we have marked and some of the information you have marked under section 552.1175 of the Government Code; however, the city may only withhold the cellular telephone numbers we marked if the cellular telephone service is not paid for by a governmental body. If the individuals whose information is at issue are not licensed peace officers or do not elect to restrict access to the information in accordance with section 552.1175(b), this information may not be withheld under section 552.1175. Regardless, the information we have marked for release is not subject to section 552.1175 and it may not be withheld on that basis.

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). Upon review, we find the city must withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). The city states the remaining information you have marked constitutes employee numbers, which also serve as access devices. Upon review, we find you have not explained how the employee numbers you have marked constitute access devices that may be used to obtain money, goods, services, or another thing of value for purposes of section 552.136. Thus, the city may not withhold this information under section 552.136 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). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, or an e-mail address a governmental entity maintains for one of its officials or employees. Upon review, with the exception of the information we have marked for release, we find the city must withhold the e-mail addresses

you have marked and we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. However, the information we have marked for release is not subject to section 552.137, and thus, may not be withheld on that basis.

In summary, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor. The city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals at issue are currently employed by the city as licensed peace officers as defined by article 2.12, then, with the exception of the information we have marked for release, the city must withhold the information we have marked and you have marked under section 552.117(a)(2) of the Government Code. If the individuals at issue are not currently employed by the city as licensed peace officers as defined by article 2.12, then, to the extent the individuals at issue were employed by the city and timely requested confidentiality under section 552.024 of the Government Code, and with the exception of the information we have marked for release, the city must withhold the information you have marked and we have marked under section 552.117(a)(1) of the Government Code. If the individuals at issue are not currently employed by the city, to the extent the individuals at issue are licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), then, with the exception of the information we have marked for release, the city must withhold the information we have marked and you have marked under section 552.1175 of the Government Code. However, in any instance, the city may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The city must withhold the motor vehicle record information you have marked and we have marked under section 552.130 of the Government Code. With the exception of the information we have marked for release, the city must withhold the e-mail addresses you have marked and we have marked under section 552.137 of the Government Code. The city must release the remaining information.⁵

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

⁵We note the requestor has a right of access beyond that of the general public to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, if the city receives another request for this information from an individual other than this requestor, the city must again seek a ruling from this office.

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 that reads "Britni Ramirez". The signature is written in a cursive, flowing style.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/dls

Ref: ID# 612853

Enc. Submitted documents

c: Requestor
(w/o enclosures)