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ATTORNEY GENERAL OF TEXAS

August 9, 2016

Mr. Matthew L. Wade
Counsel for the City of Tye
Underwood Attorneys at Law
P.O. Box 16197
Lubbock, Texas 79490

OR2016-17843

Dear Mr. Wade:

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# 621823.

The City of Tye (the "city"), which you represent, received a request for the personnel file of a specified former officer. You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.139 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or

¹We understand the city to raise section 552.139 of the Government Code based on its markings.

with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d1111 (4th Cir. 1993). Thus, the submitted W-4 form we marked constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form 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). Release of the submitted I-9 form in this instance would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form, which we have marked, is confidential pursuant to section 1324a of title 8 of the United States Code. Accordingly, the city must withhold the I-9 form, which we have marked, under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

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 [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], 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. The submitted information contains F-5 Reports of Separation of Licensee. The information at issue does not indicate the named officer resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the F-5 reports in Exhibit B under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

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 personal privacy.” 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). The city must withhold the public employee’s date of birth under section 552.102(a) of the Government Code.

Section 552.101 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 also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 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). Thus, the city must withhold the personal financial information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

The city asserts section 552.117(a)(2) is applicable to some of the remaining information. 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. Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.²

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification

²As our ruling is dispositive to the information at issue, we need not address the city’s remaining arguments against disclosure of this information.

document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Next, 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). *Id.* § 552.137(a)-(c). The city argues that although the individual at issue is a peace officer, he is no longer a city employee, and thus he is a member of the public for the purposes of section 552.137. However, we note at the time the responsive information was created, the e-mail address at issue was used to conduct official business for the city. We note section 552.137 does not apply to the private e-mail addresses of government officials who used their private e-mail addresses to conduct official government business. *Austin Bulldog v. Leffingwell*, No. 03-13-00604-CV, 2016 WL 1407818 (Tex. App.—Austin, April 8, 2016, no pet.). Accordingly, the e-mail address at issue is not of the type excepted by section 552.137, and thus, the city may not withhold the information at issue under section 552.137.

Section 552.139(b)(3) of the Government Code provides “a photocopy or other copy of an identification badge issued to an official or employee of a governmental body” is confidential. Gov’t Code § 552.139(b)(3). Accordingly, the city must withhold the identification badge we have marked under section 552.139(b)(3) of the Government Code.

In summary, the city must withhold the W-4 form, which we have marked, under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the I-9 form, which we have marked, under section 552.101 in conjunction with section 1324a of title 8 of the United States Code. The city must withhold the submitted F-5 forms under section 552.101 in conjunction with section 1701.454 of the Occupations Code. The city must withhold the public employee’s date of birth under section 552.102. The city must withhold the personal financial information we have marked under section 552.101 in conjunction with common-law privacy. Next, the city must withhold the personal information we have marked under section 552.117(a)(2). The city must withhold the motor vehicle information we have marked under section 552.130. Also, the city must withhold the identification badge we have marked under section 552.139. As you raise no other exceptions to disclosure, 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/dls

Ref: ID# 621823

Enc. Submitted documents

c: Requestor
(w/o enclosures)