



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2012

Ms. Linda Pemberton
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2012-11447

Dear Ms. Pemberton:

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# 459830 (Killeen #W008045).

The City of Killeen (the "city") received a request for information contained in a named individual's personnel file. You state the city has released some of the information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 encompasses information that other statutes make confidential. You claim portions of the submitted information are subject to section 521.051 of the Transportation Code. Section 521.051 provides the "department may not disclose class-type listings from the basic driver's license record file to any person" except in certain situations. Transp. Code § 521.051. However, chapter 521 of the Transportation Code is applicable to records maintained by the Texas Department of Public Safety. *See id.* § 521.001 (defining "department" as the Texas Department of Public Safety). We note the information at issue is maintained by the city and not the Texas Department of Public Safety. Therefore, we conclude none of the submitted information may be withheld under section 521.051 of the Transportation Code. *See Open Records Decision No. 618 (1993)* (stating the purpose of the statutory predecessor to section 521.051 "appears to be to relieve

the [Texas Department of Public Safety] of the administrative burden of compiling a list based primarily on location and the existence of traffic convictions[.]”)

Section 552.101 of the Government Code encompasses the doctrine of common-law 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 established. *Id.* at 681–82. Upon review, we find none of the submitted information is highly intimate or embarrassing. Accordingly, the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”¹ 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). Accordingly, the city must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, 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. Gov’t Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *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 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 who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individual at issue timely requested confidentiality under section 552.024, the city must withhold the personal information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1). Accordingly, the city must withhold

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

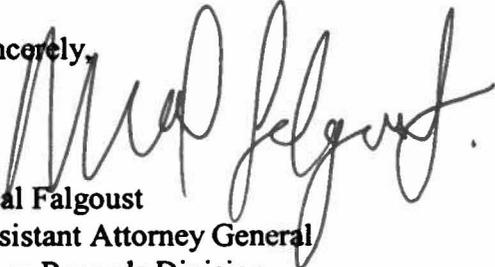
the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.102(a); section 552.117(a)(1), to the extent the individual timely requested confidentiality; and section 552.130 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 459830

Enc. Submitted documents

c: Requestor
(w/o enclosures)