



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2012

Mr. Rob Atherton
City Attorney
City of Nacogdoches
P.O. Drawer 631248
Nacogdoches, Texas 75963-1248

OR2012-13308

Dear Mr. Atherton:

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# 462889.

The City of Nacogdoches (the "city") received a request for the interviews conducted by a named individual concerning a specified application to the city's police department. You state you have released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code.¹ 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. This exception encompasses the doctrine of common-law privacy, which

¹Although you claim portions of the submitted information are excepted from disclosure under section 552.305 of the Government Code, we note section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes that a person's privacy or property interests may be involved. *See* Gov't Code § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor). We next note that although you raise section 552.024 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

protects information that (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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Further, this office has found that information pertaining to the qualifications of an applicant for public employment is generally of legitimate public interest. See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow), 329 at 2 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find none of the remaining information is highly intimate or embarrassing, or the information is of legitimate public concern. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. See *Whalen v. Roe*, 429 U.S. 589, 599- 600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7. The first is the interest in independence in making certain important decisions relating to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education the United States Supreme Court has recognized. See *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. See *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs" and the scope of information protected is narrower than that under the common-law doctrine of privacy. *Id.* at 5 (internal quotations omitted) (quoting *Ramie*, 765 F.2d at 492). Upon review, we find no portion of the remaining information falls within the constitutional zones of privacy or otherwise implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with constitutional privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure information that relates to the home address, home telephone number, emergency contact information, social security number of an employee or official of a governmental body, as well as information that reveals whether the person has family members. Gov't Code § 552.117(a)(1). Section 552.117(a)(2) 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 id.* § 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, however, that section 552.117 applies only to records that a governmental body is holding in an employment capacity. In this instance, the individual whose information is at issue was not hired by the city. Therefore, the submitted information is not held by the city in an employment context and the city may not withhold any of the submitted information under section 552.117 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, 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. *See 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). Therefore, the city must withhold the information we have marked under section 552.1175 of the Government Code if the individual whose information is at issue is currently a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b). If the individual whose information is at issue is not currently a licensed peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the city may not withhold this marked information under section 552.1175 of the Government Code.

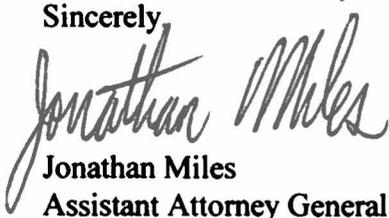
In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.1175 of the Government Code if the individual whose information is at issue is currently a licensed peace officer and elects to restrict access to his information in accordance with section 552.1175(b). 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,

A handwritten signature in cursive script that reads "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 462889

Enc. Submitted documents

c: Requestor
(w/o enclosures)