



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2012

Mr. Donald R. Stout
Counsel for the City of Midlothian
Colvin & Stout, P.C.
P.O. Box 597
Ennis, Texas 75120

OR2012-16857

Dear Mr. Stout:

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# 468521.

The City of Midlothian (the "city"), which you represent, received a request for seven categories of information related to employment applications submitted by a named individual, notifications regarding the city's decision with respect to employment of the named individual, and the pay scale for the position sought by the named individual. You indicate you have no information responsive to portions of the request.¹ You claim some of the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your claims and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the parts of the request seeking notifications regarding the city's decision with respect to employment of the named individual or the pay scale for the position sought by the named individual. To the extent information responsive to these portions of the request existed and were maintained by the city on the date the city received the request, we assume you have released it. See Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the request was received by the city. This ruling does not address the public availability of the information that is not responsive to the request, and the city is not required to release this information in response to this request.

The city claims some of the submitted information is not subject to the Act. The Act is applicable to "public information." *See id.* § 552.021. "Public information" is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The city claims the submitted e-mail addresses and social security numbers are not public information. We note the information at issue is contained within an application for employment with the city's fire department. Upon review, we find the city maintains the submitted information in connection with the transaction of official business by or for the city. Accordingly, we conclude the submitted information is subject to the Act and must be released unless it falls within an exception to disclosure.

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 common-law right of 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. The type of information considered intimate or 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 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 Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses,

operations, and physical handicaps). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (mortgage payments, assets, bills, and credit history), 373 (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city may not withhold any of the remaining responsive information under section 552.101 of the Government Code on this basis.

We note some of the remaining responsive information is subject to sections 552.1175, 552.130, and 552.137 of the Government Code.² 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 peace officers, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See Gov't Code* § 552.1175. Thus, to the extent the information we have marked relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. However, if the individual whose information is at issue is not currently a licensed peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1)-(2). Therefore, the city must withhold the information we have marked under section 552.130 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). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the city must withhold the information we have marked under: (1) section 552.101 of the Government Code in conjunction with common-law privacy; (2) 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 the information in accordance with section 552.1175(b) of the Government Code; (3) section 552.130 of the Government Code; and (4) section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city must release the remaining responsive information.³

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 468521

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains a social security number subject to section 552.147 of the Government Code. Section 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 under the Act. Gov't Code § 552.147(b).