



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2012

Ms. Donna L. Johnson
Counsel for the City of Humble
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2012-18065

Dear Ms. Johnson:

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# 472496 (Ref: COHM12-007).

The City of Humble (the "city"), which you represent, received a request for four categories of information pertaining to a named individual. You state the city has released some information to the requestor. You also state the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically excludes social security numbers from her request. Thus, this information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.

¹Section 552.130(c) of the Government Code authorizes governmental bodies to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See *id.* § 552.130(d), (e).

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 section encompasses information protected by other statutes, including section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 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 Internal Revenue Service] with respect to a return or 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[.]

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 (the “IRS”) regarding a taxpayer’s liability under title 26 of the United States Code. *See Chamberlain v. Kurtz*, 589 F.2d 827, 840-41 (5th Cir. 1979); *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). We have marked W-4 forms in the responsive information. Thus, the city must withhold the W-4 forms we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.²

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the city with two of the three requisite pieces of information for any of the submitted accident reports. Accordingly, the city must withhold the submitted accident reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 58.005 of the Family Code, which provides that “[r]ecords and files concerning a child, including personally identifiable information, and information obtained for the purpose of diagnosis, examination,

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to [certain listed individuals]." Fam. Code § 58.005(a). You do not inform us, and the submitted information does not itself reflect, that any of this information was "obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court." *Id.* We therefore conclude none of the remaining responsive information is confidential pursuant to section 58.005 of the Family Code and the city may not withhold any of it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). Law enforcement records relating to juvenile delinquent conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code. *See id.* § 51.03 (defining "delinquent conduct" for purposes of title 3 of the Family Code). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find some of the remaining responsive information, which we have marked, consists of law enforcement records involving allegations of juveniles engaged in delinquent conduct occurring after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 of the Family Code apply to this information. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family

Code.³ However, upon review, we find none of the remaining responsive information pertains to juvenile conduct that occurred on or after September 1, 1997. Thus, we find you have failed to demonstrate how the any of the remaining responsive information is subject to section 58.007(c), and it may not be withheld under section 552.101 on that basis.

We note some of the remaining responsive information is subject to former section 51.14 of the Family Code, which is also encompassed by section 552.101 of the Government Code. Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former section 51.14(d) of the Family Code excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 only applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). In this instance, the remaining responsive information we have marked consists of law enforcement records involving juveniles engaged in delinquent conduct before January 1, 1996. *See id.* § 51.03 (defining "delinquent conduct"). Therefore, this information is confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code.⁴

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). You seek to withhold the remaining responsive information under section 261.201(a) of the Family Code. Upon review, however, we find you have failed to demonstrate how any of the remaining responsive information pertains to a report made or an investigation conducted under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we find none of the remaining responsive information is confidential pursuant to section 261.201 of the Family Code. Accordingly, the city may not withhold any of the remaining responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 815.503(a) of the Government Code, which provides as follows:

(a) Records of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the [Employees] retirement system [the “ERS”] that are in the custody of the ERS or of an administering firm, carrier, or other governmental agency acting in cooperation with or on behalf of the [ERS] are confidential and not subject to public disclosure, and the [ERS], administering firm, carrier, or governmental agency is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the provisions of [the Act], except as otherwise provided by this section.

Gov’t Code § 815.503(a). You do not indicate to this office that the city maintains any of the remaining responsive information as “an administering firm, carrier, or other governmental agency acting in cooperation with or on behalf of the [ERS].” *Id.* § 815.503(a). We thus are unable to conclude that any of the information at issue constitutes “[r]ecords . . . that are in the custody of [ERS] or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the [ERS].” *Id.* Therefore, section 815.503 does not make any of the information at issue confidential, and none of it may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also 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 satisfied. *Id.* at 681-82. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate or embarrassing and of no legitimate public interest.

See Open Records Decision Nos. 600 (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note, however, that the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁵ However, we find none of the remaining responsive information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining responsive information may be withheld under section 552.101 on the basis of common-law privacy.

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). Upon review, we find the city must withhold the information we have marked under section 552.102(a) of the Government Code. However, we find you have failed to demonstrate how any portion of the remaining responsive information must be withheld under section 552.102(a). Accordingly, the city may not withhold any of the remaining responsive information under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. 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

⁵As we our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Criminal Procedure. We note that an individual's personal post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (legislative history makes clear that purpose of section 552.117 is to "protect public employees from being harassed *at home*" (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added)). Accordingly, if the individuals whose information we have marked in the remaining responsive information are currently licensed peace officers, the city must withhold the information we have marked under section 552.117(a)(2).

If the individuals concerned are no longer licensed peace officers, the marked information may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue are no longer licensed peace officers and timely requested confidentiality pursuant to section 552.024, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code. The city may not withhold the marked information under section 552.117(a)(1) if the individuals did not make a timely election to keep the information confidential.

Section 552.1175 of the Government Code applies to information pertaining to peace officers employed by a governmental body other than the city.⁶ Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to

⁶The 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).

whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Upon review, we conclude the city must withhold the cellular telephone numbers we have marked under section 552.1175 if the individuals to whom the information pertains are currently licensed peace officers and they elect to restrict access to their information in accordance with section 552.1175(b). However, the city may withhold this information only if the cellular service is not paid for with government funds. If the individuals are no longer licensed peace officers or no elections are made, the city may not withhold the individuals' information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find you have failed to demonstrate the applicability of section 552.130 to any of the remaining responsive information. Thus, the city may not withhold any of the remaining responsive information 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); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the insurance policy numbers we have marked 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). *Id.* § 552.137(a)-(c). The e-mail addresses we have marked are not a type specifically excluded by section 552.137(c).

Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release.

In summary, the city must withhold the W-4 forms we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. The city must withhold the accident reports we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. 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 552.102(a) of the Government Code. If the individuals whose information we have marked are still licensed peace officers, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individuals whose information we have marked are no longer licensed peace officers and timely requested confidentiality pursuant to section 552.024 of the Government Code, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code. The city must withhold the cellular telephone numbers we have marked under section 552.1175 of the Government Code if the individuals to whom the information pertains are currently licensed peace officers, they elect to restrict access to their information in accordance with section 552.1175(b), and the cellular service is not paid for with governmental funds. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release.⁷ The city must release the remaining information.

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

⁷We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code and e-mail addresses of members of the public under section 552.137 of the Government Code.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 472496

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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