



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2012

Mr. Jason M. Rammel
For City of Elgin
Sheets & Crossfield, P.C
309 East Main Street
Round Rock, Texas 78664

OR2012-20654

Dear Mr. Rammel:

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# 474354.

The City of Elgin (the "city"), which you represent, received a request for information related to a named former city employee.¹ You state you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted motor vehicle record information pursuant to section 552.130 of the Government Code,² bank account and bank routing numbers pursuant

¹You state the city sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.130(c) allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. 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). *Id.* § 552.130(d), (e).

to section 552.136 of the Government Code,³ and information under section 552.117(a)(2) of the Government Code⁴ pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 670 (2001).⁵ However, you have also redacted information, including TCLEOSE numbers, that the city has not been authorized to withhold without seeking a ruling from this office. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of this information, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. See Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *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 at 9-10 (1992) (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, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983). We find the information you have marked under common-law privacy and the additional information we have marked constitute highly intimate or embarrassing information of no legitimate public interest. As such, the marked information must be

³Section 552.136(c) of the Government Code authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of seeking an attorney general decision. See Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). See *id.* § 552.136(d), (e).

⁴ Although you state you have redacted portions of the submitted information under section 552.117 of the Government Code, we note section 552.117 of the Government Code is the proper exception to assert for information the city holds in an employment capacity.

⁵ A government body may withhold a peace officer's home address and telephone number, personal cell phone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. See ORD 670; Gov't Code § 552.147(b).

withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102 of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwanted invasion of personal privacy.” Gov’t Code § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code, discussed above. *See Indus. Found*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, *writ ref’d n.r.e.*), the Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court expressly disagreed with *Hubert*’s interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of section 552.102, and 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. *See id.* at 346. Accordingly, the city must withhold the dates of birth you have marked, in addition to the date of birth we have marked, under section 552.102(a) of the Government Code.

Next, we note additional portions of the submitted information are subject to section 552.117. Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer complies with section 552.024 of the Government Code or section 552.1175 of the Government Code. Gov’t Code § 552.117(a)(2). In this instance, you state the individual at issue is no longer employed with the city police department. Thus, it is unclear whether the former employee whose information is at issue is currently a licensed peace officer as defined by article 2.12. Accordingly, if the former employee at issue is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information you have marked, in addition to the information we have marked, under section 552.117(a)(2) of the Government Code.

In the event the former employee at issue is no longer a licensed peace officer, then the marked personal information may be subject to 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 officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 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 current or former officials or employees only if these individuals 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 individual whose information is at issue is not currently a licensed peace officer and timely elected to keep his personal information confidential pursuant to section 552.024, the city must withhold the information you have marked, in addition to the information we have marked, under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117 if the individual did not make a timely election to keep the information confidential.

The remaining information contains photocopies of the specified officer's identification cards. 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.⁶ Gov't Code § 552.139(b)(3). Therefore, the city must withhold the photocopies of the identification cards, which we have marked, under section 552.139(b)(3) of the Government Code.⁷

In summary, the city must withhold the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.⁸ The city must withhold the information you have marked, in addition to the information we have marked, under section 552.102(a) of the Government Code. If the former employee at issue is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information you have marked, in addition to the information we have marked, under section 552.117(a)(2) of the Government Code. If the individual whose information is at issue is not currently a licensed peace officer and timely elected to keep his personal information confidential, the city must withhold the information you have marked, in addition to the information we have marked, under section 552.117(a)(1) of the Government Code. The city must withhold the photocopies of the identification cards, which we have marked, under section 552.139(b)(3) of the Government Code. The remaining information must be released.

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).

⁷As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁸We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision, including a direct deposit authorization form under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 474354

Enc. Submitted documents

c: Requestor
(w/o enclosures)