



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2013

Ms. Lee Ann Rimer
Senior Assistant City Attorney
City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2013-00702

Dear Ms. Rimer:

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# 475973.

The City of Odessa (the "city") received a request for all documents related to investigations resulting in disciplinary action against police officers during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you contend a portion of the submitted information is not responsive because it concerns "investigations which are not the subject of this request." We note a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). The instant request asks for all documents related to investigations resulting in disciplinary action. Accordingly, we find the submitted internal investigations and disciplinary documents are responsive to the instant request. As the city has identified these documents and has submitted them to our office for review, we will consider your arguments against the disclosure of all of the submitted information.

Next, we note the submitted information relates to completed investigations that are subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Although you assert some of this information is excepted from disclosure under section 552.111, this section is a discretionary exception to disclosure that protects the governmental body's interests and does not make information confidential under the Act. *See* Open Records Decision No. 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the city may not withhold the information you have indicated under section 552.111. However, you also raise sections 552.101, 552.117, and 552.130 of the Government Code, and we note a portion of the information is subject to section 552.102 of the Government Code.¹ Because these sections make information confidential under the Act, we will consider their applicability. Further, because information subject to section 552.022(a)(1) may be excepted under section 552.108 of the Government Code, we will address your argument under this exception as well.

Section 552.101 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 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. The type of information considered highly 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. We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees, particularly those involved in law enforcement. *See* Open Records Decision Nos. 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), 432 at 2 (1984) (scope

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of public employee privacy is narrow). Upon review, we find none of the information at issue is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of the submitted information may be withheld on this basis.

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 has 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 have marked a birth date that must be withheld under section 552.102(a) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department’s use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement; the determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

Some of the information at issue consists of information pertaining to undercover police officers as well as descriptions of vehicles used in undercover operations. You indicate disclosure of this information would compromise the city’s law enforcement investigations and jeopardize the safety of its undercover officers. Upon review, we find some of the submitted information, a representative sample of which we have marked, may be withheld

under section 552.108(b)(1).² Upon review, we find you have failed to explain how release of any of the remaining information would interfere with law enforcement and crime prevention. Consequently, you have failed to demonstrate the applicability of section 552.108(b)(1) to the remaining information at issue, and none of it may be withheld on that basis.

Section 552.117(a)(2) of the Government Code 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. 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 Criminal Procedure. We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use).

You raise section 552.117 for a portion of the submitted information, but have failed to identify any information you seek to withhold under this exception. Thus, we must rule conditionally. To the extent you determine any of the information we have marked consists of the home or personal cellular telephone number of a peace officer, that information must be withheld under section 552.117(a)(2) of the Government Code. To the extent the information we have marked does not consist of such information, that information may not be withheld under section 552.117(a)(2).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1)-(2). Upon review, we find 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). *See id.* § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to its release.

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

In summary, the city may withhold the types of information we have marked under section 552.108(b)(1) of the Government Code. To the extent you determine any of the information we have marked consists of the home or personal cellular telephone number of a peace officer, that information must be withheld under section 552.117(a)(2) of the Government Code. The city must withhold the information we have marked under sections 552.130 and 552.137 of the Government Code. 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 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 475973

Enc. Submitted documents

cc: Requestor
(w/o enclosures)