



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2013

Ms. Suzanne Finch
City Secretary
City of Hereford
P.O. Box 2277
Hereford, Texas 79045-2277

OR2013-02427

Dear Ms. Finch:

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# 478764.

The City of Hereford (the "city") received a request for information related to the city charter and the recent "filling [of] the police chief position[.]" You state the city has made some responsive information available for inspection by the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 section 552.024 or

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.1175 of the Government Code.² 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. Accordingly, we conclude the city must withhold the information we have marked under section 552.117(a)(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 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* Gov't Code § 552.1175. We note a post office box number is not a "home address" for purposes of section 552.1175. *See* Open Records Decision No. 622 at 6 (1994). We further note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Section 552.1175 also encompasses a cellular telephone number, provided the cellular telephone service is not paid for by a governmental body. *See* 506 at 5-6. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." Gov't Code § 552.1175(a)(1).

Upon review, we have marked information that is subject to section 552.1175. If the individuals whose information is at issue are currently licensed peace officers and if they elect to restrict access to the information pertaining to them in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if the cellular telephone services are not paid for by a governmental body.³

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."⁴ 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

²Open Records Decision No. 670 (2001) is a previous determination that authorizes all governmental bodies to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code, without the necessity of requesting an attorney general decision.

³Section 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. *Id.* § 552.147(b).

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82.

This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). 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.

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). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the date of birth of an employee of a governmental body in a record maintained by his or her employer in an employment context. We have marked a date of birth that must be withheld under section 552.102(a). The remaining date of birth in the submitted records pertains to an applicant the city did not hire. As such, the remaining information at issue is not excepted under section 552.102(a) and may not be withheld on that basis.

We note the remaining records contain information subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle 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). Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.⁵

Section 552.136(b) of the Government Code states that “[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). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”).

⁵Section 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).

Therefore, the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.⁶

Section 552.137 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 is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.⁷

Finally, we note section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). We have marked a DD-214 form. We understand the city came into possession of the form on or after September 1, 2003. Therefore, the city must withhold the DD-214 form under section 552.140 of the Government Code.⁸

In summary, 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 under section 552.1175 of the Government Code are currently licensed peace officers and if they elect to restrict access to the information pertaining to them in accordance with section 552.1175(b) of the Government Code, the city must withhold this information under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if the cellular telephone services are not paid for by a governmental body. The city must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the birth date we have marked under section 552.102(a) of the Government

⁶Section 552.136 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, access device numbers subject to section 552.136(b). *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body’s decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

⁷Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁸Open Records Decision No. 684, discussed above, also permits a governmental body to withhold a DD-214 form under section 552.140 of the Government Code without the necessity of requesting an attorney general decision.

Code; (3) the information we have marked under section 552.130 of the Government Code; (4) the insurance policy number we have marked under section 552.136 of the Government Code; (5) the e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its release; and (6) the DD-214 form under section 552.140 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 478764

Enc. Submitted documents

c: Requestor
(w/o enclosures)