



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2013

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2013-05504

Dear Ms. Villarreal:

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# 483304 (LGL-13-084).

The City of Waco (the "city") received a request for information pertaining to the employment application of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹Although you do not specifically raise sections 552.130, 552.137, or 552.147 of the Government Code in your brief, we understand you to raise these exceptions based on your markings.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a), (b). Portions of the submitted information, which we have marked, consist of information acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, the city must withhold the polygraph information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, you have not demonstrated how the remaining information you marked consists of information acquired from a polygraph examination for purposes of section 1703.306. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See 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 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 455 at 9 (employment

applicant salary information not private). Upon review, we find the remaining information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Some of the remaining information may be subject to section 552.1175 of the Government Code.³ 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 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). Some of the remaining information contains personal information of an individual who is a retired peace officer of another law enforcement agency, as well as personal information of an individual employed as a peace officer of another law enforcement agency. We are unable to determine whether the individuals at issue are currently licensed peace officers. Thus, to the extent the information at issue pertains to individuals who are licensed peace officers who elect to restrict access to their marked information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. Conversely, if the individuals at issue are not licensed peace officers or do not elect to restrict access to their information in accordance with section 552.1175(b), the information at issue may not be withheld under section 552.1175 of the Government Code.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the city must withhold the driver's license 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 addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address you have marked, as well as the additional e-mail address we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Therefore, the city may withhold the marked social security numbers under section 552.147(a) of the Government Code.

In summary, the city must withhold (1) the polygraph information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (2) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information we marked under section 552.1175 of the Government Code, to the extent the information we marked pertains to individuals who are licensed peace officers who elect to restrict access to their marked information in accordance with section 552.1175(b); (4) the driver's license information we marked under section 552.130 of the Government Code; (5) the marked personal e-mail addresses under section 552.137 of the Government Code, unless the owners consent to release; and (6) the marked social security numbers under section 552.147 of the Government Code. The city must release the remaining information.⁴

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

⁴We note 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. *See Gov't Code* § 552.147(b).

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 483304

Enc. Submitted documents

c: Requestor
(w/o enclosures)