



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2014

Ms. Erin Higginbotham
Counsel for the City of Copperas Cove
Denton, Navarro, Rocha & Bernal, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2014-07926

Dear Ms. Higginbotham:

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# 522238 (City Ref. Nos. W002090-021814, W002102-022614, and W002134-031914).

The City of Copperas Cove (the "city"), which you represent, received a request for information regarding a named city fire department employee's termination and any corrective action or warnings given to him prior to termination. The city received a second request from a separate requestor for all information regarding incidents that may have led to the same employee's termination.¹ You inform us you have released some information to the requestors. We understand you have redacted a social security number in accordance with section 552.147(b) of the Government Code.² You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the

¹We note the city sought and received clarification from the requestor regarding this request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); see also *City of Dallas v. Abbott*, 304 S.W.3d 380 (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 552.147(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 under the Act. Gov't Code § 552.147(b).

Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we find none of the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city may not withhold any of the information you have 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 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, 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 of the Government Code or section 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). We note section 552.117(a)(2) encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). You inform us you have marked personal cellular telephone numbers for which the cellular telephone service is not paid for by the city. In this instance, it is unclear whether the individuals at issue are currently licensed peace officers as defined by article 2.12. Therefore, if the individuals at issue are currently licensed peace officers as defined by article 2.12, the city must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code. However, if the individuals at issue are not currently licensed peace officers, the marked information may not be withheld under section 552.117(a)(2).

To the extent the individuals at issue are not currently licensed peace officers, their personal information may be subject to section 552.117(a)(1) of the Government Code.

³Although you state you will redact certain information pursuant to section 552.1175(f) of the Government Code, we note section 552.117 of the Government Code is the applicable exception for information maintained in an employment context. *See* Gov't Code §§ 552.117, .1175. Thus, we understand you to claim section 552.117 applies to the submitted information.

⁴"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Section 552.117(a)(1) also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* ORD 506 at 5-7. Therefore, if the individuals at issue are not currently licensed peace officers and they timely elected to keep such information confidential under section 552.024, the city must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. If the individuals at issue did not make a timely election under section 552.024, the city may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.136(b) of the Government Code states “[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.” Gov't Code § 552.136(b). We note you seek to withhold the marked federal tax identification number. However, upon review, we find you have failed to demonstrate how the marked federal tax identification number constitutes an access device number used to obtain money, goods, services, or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument. Therefore, except for the federal tax identification number, which we have marked for release, the city must withhold the account numbers you 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c).⁵ *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

⁵The 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).

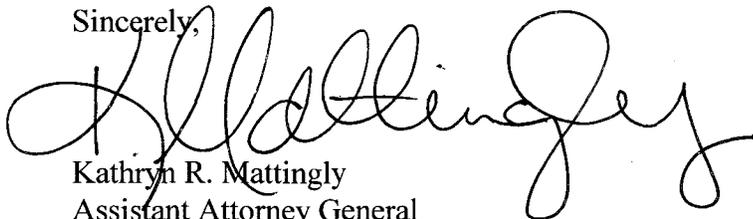
We note some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, if the individuals at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code. If the individuals at issue are not currently licensed peace officers and they timely elected to keep such information confidential under section 552.024 of the Government Code, the city must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. Except for the federal tax identification number we have marked for release, the city must withhold the account numbers you have marked under section 552.136 of the Government Code. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The remaining information must be released; however, any information subject to copyright may be released only in accordance with copyright law.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 522238

Enc. Submitted documents

c: Requestor
(w/o enclosures)