



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 16, 2014

Mr. Rene Ruiz
For the City of Harlingen
Cox Smith Matthews Incorporated
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205

OR2014-10355

Dear Mr. Ruiz:

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# 526235.

The City of Harlingen (the "city"), which you represent, received a request for the personnel file of a former city employee. You state the city has released some of the requested information with the redaction of information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, motor vehicle record information pursuant to section 552.130(c) of the Government Code, and certain information pursuant to Open Records Decision No. 684 (2009). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-01478 (2014). In that ruling, we concluded the city (1) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.102(a) of the Government Code, and section 552.117(a)(1) of the Government Code, to the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code and (2) the city must release the remaining information. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on Open Records Letter

No. 2014-01478 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will now address your arguments against disclosure of the submitted information not previously ruled upon in Open Records Letter No. 2014-01478.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information made confidential by other statutes. Gov’t Code § 552.101. You contend a portion of the submitted information is confidential under rule 2.16 of the Texas Rules of Disciplinary Procedure, which provides that certain records of a grievance committee of the State Bar of Texas (the “state bar”) are confidential.¹ TEX. R. DISCIPLINARY P. 2.16, *reprinted in* Gov’t Code tit. 2, subtit. G, app. A-1. Section 81.033(a) of the Government Code provides that records of the state bar pertaining to grievances that are confidential under the Texas Rules of Disciplinary Procedure are not subject to the Act. *See* Gov’t Code § 81.033(a). We note that rule 2.16 and section 81.033(a) apply to records of the state bar. Gov’t Code § 81.033(a); TEX. R. DISCIPLINARY P. 2.16. The submitted information consists of records of the city. We find that rule 2.16 and section 81.033(a) are not applicable to the information at issue in the hands of the city. We therefore determine the information at issue is not confidential pursuant to rule 2.16 and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found that 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). A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public

¹We note that the rules of the state bar have the same effect as statutes. *See Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994).

records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate how any of the remaining information is protected by common-law privacy. Therefore, the city may not withhold any of the remaining information 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). The city must withhold the information you have marked and the information we have marked under section 552.102(a) 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. Gov't Code §§ 552.024, .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). 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.

Therefore, to the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employee at issue did not timely request confidentiality under section 552.024, the city may not withhold the information we have marked under section 552.117(a)(1). The city has failed to demonstrate that any of the remaining information is subject to section 552.117, and the city may not withhold it on that basis.

In summary, the city must continue to rely on Open Records Letter No. 2014-01478 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The city must withhold the information we have marked under

section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked and the information we have marked under section 552.102(a) of the Government Code. To the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) 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.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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 526235

Enc. Submitted documents

c: Requestor
(w/o enclosures)