



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 22, 2014

Mr. Charles D. Olson  
Counsel for the City of Meridian  
Haley & Olson, P.C.  
510 North Valley Mills Drive, Suite 600  
Waco, Texas 76710

OR2014-19036

Dear Mr. Olson:

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# 540298.

The City of Meridian (the "city"), which you represent, received a request for (1) information pertaining to a named officer from 2011 to the date of the request, (2) background check records pertaining to all city hall staff members and employees of the city's police department (the "department"), and (3) three specified statutes. You state the city has released some information to the requestor. You state the city does not have information responsive to portions of the request.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers.<sup>2</sup> In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officers' TCOLE identification numbers in the responsive information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.

Section 552.101 of 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 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. 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) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987), 444 at 5-6 (1986), 432 at 2 (1984).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate how the remaining

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<sup>2</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information under section 552.101 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.”<sup>3</sup> 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, the city must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 552.117(a)(2). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *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). We also note a post office box number is not a “home address” for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 552.117 is to protect public employees from being harassed at home). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers under section 552.117(a)(2) if a governmental body did not pay for the cellular telephone service. The remaining information is not excepted under section 552.117(a)(2) and may not be withheld on that basis.

Section 552.1175 of the Government Code excepts from public disclosure the home addresses and telephone numbers, social security numbers, dates of birth, emergency contact information, and family member information of specified categories of governmental body employees or officials, including peace officers as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov’t Code § 552.1175(a)-(b). A portion of the remaining information contains the home telephone number of an individual who may be a peace officer of another law enforcement agency. However, we are unable to determine from the information provided if the individual at issue is a currently licensed peace officer. Thus, we

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

must rule conditionally. Accordingly, to the extent the home telephone number we have marked belongs to an individual who is currently licensed as a peace officer and who elects to restrict access to the 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 individual whose telephone number is at issue is not currently licensed as a peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the telephone number at issue may not be withheld under section 552.1175.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

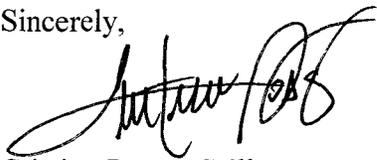
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Upon review, we find some of the submitted information consists of e-mail addresses of members of the public. You do not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. However, the remaining information you seek to withhold does not consist of e-mail addresses of members of the public. Thus, the city may not withhold any of the remaining information under section 552.137.

In summary, the TCOLE numbers in the submitted information are not subject to the Act and need not be released to the requestor. 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 we have marked under section 552.102 of the Government Code. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers under section 552.117(a)(2) if a governmental body did not pay for the cellular telephone service. To the extent the home telephone number we have marked belongs to an individual who is currently licensed as a peace officer and who elects to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', written over a horizontal line.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 540298

Enc. Submitted documents

c: Requestor  
(w/o enclosures)