



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2016

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2016-22080

Dear Ms. McClellan:

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# 628683 (DPD Request No. 2016-15514).

The Dallas Police Department (the "department") received a request for the personnel file of a named officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, 552.139, 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code. You claim the submitted information is confidential pursuant to section 58.007(c) of the Family Code, which

¹Although the department does not raise sections 552.117, 552.136, and 552.139 of the Government Code in its brief, we understand it to raise these exceptions based on its 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.

applies to juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. However, we note section 58.007 is inapplicable in this instance because the conduct at issue occurred in 1993. Accordingly, we will address the applicability of former section 51.14 of the Family Code.

Prior to its repeal by the Seventy-Fourth Legislature, section 51.14(d) provided for the confidentiality of juvenile law enforcement records pertaining to conduct occurring before January 1, 1996. Former section 51.14(d) was continued in effect for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 provided, in relevant part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Fam. Code § 51.14 (repealed 1995). A “child” is defined as a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). Upon review, we find the information we have marked pertains to juvenile conduct that occurred prior to January 1, 1996, and pertains to an individual who was ten years of age or older and under seventeen years of age at the time of the offense. Further, the requestor does not fall within the categories in former section 51.14(d) under which inspection of the records would be permitted. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (formerly Fam. Code § 51.14(d)(1), (2), (3)). Therefore, we find former section 51.14(d) is applicable to the information we have marked. Fam. Code § 51.04(a) (Title 3 covers cases involving delinquent conduct engaged in by child). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides in part:

- (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 other than:

- (1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. Upon review, we find the information you have marked was acquired from a polygraph examination. The marked information is confidential under section 1703.306 of the Occupations Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information other statutes make confidential, such as section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 of the Government Code provides, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). The submitted information contains fingerprints. You do not inform us, and the submitted information does not indicate, section 560.002 permits disclosure of the fingerprint information. Therefore, the department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, we find you have failed to demonstrate any of the remaining information is subject to section 560.003 of the Government Code. Thus, the department may not withhold any portion of the remaining information under section 552.101 on that basis.

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[.]”³ *Id.* § 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). Upon review, we find the department must withhold the date of birth you have marked and the additional instances we have marked under section 552.102(a) of the Government Code.⁴

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

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

⁴As our ruling is dispositive, we need not address the department’s remaining argument against disclosure of this information.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁵

However, the department has failed to demonstrate the remaining information it has marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the department may not withhold the remaining information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 and 552.1175 of the Government Code.⁶ *See* Gov't Code § 552.117(a)(2). We 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). We also note section 552.117(a)(2) is not applicable to an individual's girlfriend, former girlfriend, former spouse, or the fact that the employee has been divorced. Section 552.117 also protects a peace officer's personal cellular telephone number if a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 670 at 6 (2001) (section 552.117(a)(2) excepts from disclosure peace officer's cellular telephone or pager number if officer pays for cellular telephone or pager service). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the

⁵As our ruling is dispositive, we need not address the department's remaining argument against disclosure of this information.

⁶Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

Government Code.⁷ However, the department may not withhold the cellular telephone number at issue under section 552.117(a)(2) if a governmental body pays for the cellular telephone service. Further, you have failed to demonstrate the remaining information you have marked consists of the home address, home telephone number, emergency contact information, and social security number of a peace officer, or information that reveals whether the peace officer has family members. Thus, the department may not withhold the remaining information you have marked under section 552.117 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or 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. Gov't Code § 552.130(a). Upon review, we find the department must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code.⁸

You claim the employee ID number you have marked is subject to section 552.136 of the Government Code. Section 552.136 provides that “[n]otwithstanding any other provision of this chapter, 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. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). We understand the employee ID number is the same number used for the city credit union bank accounts. Based on this representation, we find the department must withhold the employee ID number you have marked, and the additional instances we have marked, under section 552.136 of the Government Code.

Section 552.139(b)(3) of the Government Code provides “a photocopy or other copy of an identification badge issued to an official or employee of a governmental body” is confidential. *Id.* § 552.139(b)(3). Upon review, we find no portion of the information at issue consists of a copy of an identification badge issued to an official or employee of a governmental body. Accordingly, the department may not withhold any of the remaining information under section 552.139(b)(3) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with former section 51.14(d) of the Family Code. The department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the fingerprints we have marked under

⁷As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁸As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the date of birth you have marked and the additional instances we have marked under section 552.102(a) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the department may not withhold the cellular telephone numbers at issue under section 552.117(a)(2) if a governmental body pays for the cellular telephone service. The department must withhold the motor vehicle record information it has marked, as well as the information we have marked, under section 552.130 of the Government Code. The department must withhold the employee ID number you have marked, and the additional instances we have marked, under section 552.136 of the Government Code. The remaining information must be released.

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/bhf

Ref: ID# 628683

Enc. Submitted documents

c: Requestor
(w/o enclosures)