



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 31, 2016

Ms. Linda Pemberton  
Paralegal  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2016-24147

Dear Ms. Pemberton:

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# 632540 (PIR# W019990).

The City of Killeen (the "city") received a request for information pertaining to the requestor's work separation.<sup>1</sup> You state the city released some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>We note the requestor clarified her 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).

<sup>2</sup>We note the city failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code is a mandatory exception that constitutes a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the city's argument under section 552.101.

We note some of the submitted information may be subject to section 552.117 of the Government Code.<sup>3</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(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). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the information we marked pertains to a current or former city employee and the individual timely requested confidentiality under section 552.024, the city must withhold the information we marked under section 552.117(a)(1).

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. This section 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. 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). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the information we marked pertains to an individual whose identity may be protected under section 552.117(a)(1) of the Government Code. In that instance, the information at issue relates to an individual who has been de-identified and whose privacy interest is thus protected, and the city may not withhold that information under section 552.101 in conjunction with common-law privacy. Further, we find none of the remaining information at issue is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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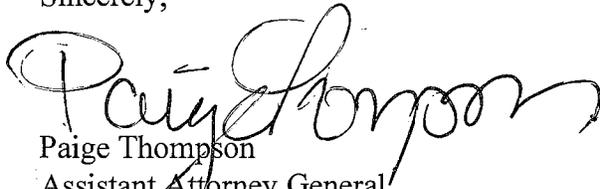
<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the information we marked pertains to a current or former city employee and the individual timely requested confidentiality under section 552.024, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. To the extent the information we marked pertains to an individual who has not been de-identified, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 632540

Enc. Submitted documents

c: Requestor  
(w/o enclosures)