Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1994

Ms. Helen M. Gros
Division Chief of General Counsel
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR94-288

Dear Ms. Gros:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 25863.

The City of Houston (the "city") received an open records request for the personnel files of four city police officers. You advise us that the city has made most of the requested information available to the requestor. However, you seek to withhold some of the requested information under sections 552.101, 552.115, and 552.117 of the Government Code.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You seek to withhold the police officers' W-4 forms from required public disclosure under section 552.101 in conjunction with federal law. Title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms); 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Accordingly, the city must withhold the W-4 forms from required public disclosure under section 552.101 of the Government Code.

Next, we address your claim that section 552.101 excepts from disclosure the police officers' social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii). In relevant

part, the 1990 amendments to the federal Social Security Act make confidential social security account numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We caution, however, that an employer may be required to obtain an employee's social security number under laws that predate October 1, 1990; a social security number obtained under a law that predates October 1, 1990, is not made confidential by the 1990 amendments to the Social Security Act. On the other hand, section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing *any* social security number, you should ensure that it was not obtained pursuant to a law enacted on or after October 1, 1990.

You also assert section 552.101 in conjunction with section 143.1214 of the Local Government Code.[1] We note that section 143.089(g) of the Local Government Code also governs this information. Section 143.089(g) provides:

> A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Recently, in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. The *City of San Antonio* court, however, did not comment on the availability of information contained in the police officer's civil service file. In cases in which a police department takes disciplinary action against a police officer, section 143.089(a)(2) requires the police department to transfer records relating to the investigation and disciplinary action to the city civil service commission. Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990).

You have submitted to us for review information relating to allegations of police officer misconduct (Exhibit 3, 4, and 5). The allegations were not sustained and therefore

---

[1]This office is currently considering in RQ-688 whether section 143.1214 requires a police department to withhold all documents relating to a criminal investigation of a police officer or firefighter when the employing department does not sustain the allegations or take any disciplinary action.

did not result in disciplinary action. Accordingly, the information relating to these allegations must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code.

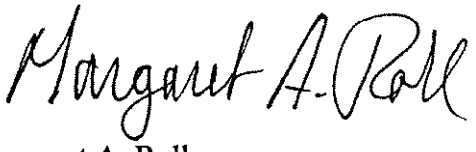
Next, we address your claim that the common-law privacy doctrine protects some of the requested information (exhibits 6 and 7). Information may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.); *see also* Open Records Decision No. 441 (1986). Under *Industrial Foundation*, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* it is of no legitimate concern to the public. We agree that exhibits 6 and 7 may contain information that is intimate or embarrassing. *See, e.g.*, Open Records Decision Nos. 470 (holding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (holding that kinds of prescription drugs a person is taking are protected by common-law privacy); 343 (1982) (holding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy). In any case, the information contained in exhibits 6 and 7 is of legitimate public concern because it relates to the on-duty conduct of a police officer. Accordingly, the city may not withhold exhibits 6 and 7 under section 552.101 of the Government Code.

The city also may not withhold any birth certificates contained in the requested files under section 552.115. Section 552.115 excepts certain birth or death records maintained by the bureau of vital statistics of the Texas Department of Health. Section 552.115 makes birth records available to the public on and after the 50th anniversary of the date on which the record is filed with the bureau of vital statistics or a local registration official and makes death records available to the public on and after the 25th anniversary of the date on which the record is filed with the bureau of vital statistics or a local registration official. *See generally* Open Records Decision No. 596 (1991). Section 552.115, by its very terms, however, does not except birth or death certificates that are not filed with the bureau of vital statistics or a local registration official, *i.e.*, birth or death certificates contained in a personnel file. Therefore, any birth certificates contained in the requested records are not excepted from disclosure by section 552.115.

Finally, we address your assertion that section 552.117 excepts some of the requested information from required public disclosure. Section 552.117 excepts from disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold any home address or telephone number of a peace officer that appears in the requested documents.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Ref.: ID# 25863

Enclosures: Submitted documents

cc: Mr. Dennis W. Craggs
Dennis W. Craggs & Associates
1900 M. Loop W., Suite 520
Houston, Texas 77018
(w/o enclosures)