



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1995

Mr. Don J. Rorschach
City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75060

OR95-1534

Dear Mr. Rorschach:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 36273.

The City of Irving (the "city") received an open records request for the personnel file and other related documents of a particular former police officer. You state that you have released some of the information requested. You contend that some of the information requested is excepted from required public disclosure pursuant to sections 552.101 and 552.102 of the Government Code because it is confidential. You have submitted for our review marked documents reflecting the information that you contend is confidential or protected by common-law privacy and is excepted from required disclosure pursuant to section 552.101.

You contend that the former officer's home address, home telephone number, and social security number may be withheld from required disclosure. Sections 552.024 and 552.117 of the Government Code were amended by the Seventy-Fourth Legislature to include social security numbers and information revealing whether a government employee has family members. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 5, 9, 1995 Sess. Law Serv. 5127, 5130, 5132. In pertinent part, section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether the following persons have family members: all peace officers, as defined by article 2.12 of the Code of Criminal Procedure; security officers commissioned under Education Code section 51.212; and all current or former officials or employees of a governmental body who request that this information be kept confidential

under section 552.024. *Id.* § 9, 1995 Tex. Sess. Law Serv. at 5132. Therefore, if the former city police officer is currently a peace officer as defined by article 2.12 of the Code of Criminal Procedure, or, made the election under section 552.024 of the Government Code to keep that information confidential, section 552.117 requires that the city redact that information prior to releasing other information. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address, telephone number, social security number, or family information of an official or employee who made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

Section 552.101 excepts from required public disclosure information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* In addition to common-law privacy, section 552.101 protects from disclosure matters that are deemed private pursuant to constitutional privacy. The *Industrial Foundation* court determined that constitutional privacy, and thus section 552.101, protects matters within previously recognized and protected "zones of privacy"; these zones include matters relating to marriage, procreation, contraception, family relationships, child rearing, and education. 540 S.W.2d at 678. Once a determination is made that a matter is within a constitutionally protected zone of privacy, one must balance this privacy interest against the public's interest in access to such information. *See* Open Records Decision Nos. 628 (1994) at 5, 455 (1987) at 7. A determination of the applicability of constitutional privacy must be made on a case-by-case basis, weighing the individual's right to privacy against the public's interest in disclosure of the information. *See* Open Records Decision No. 455 (1987) at 7.

You contend that the former officer's college transcript is protected from required disclosure. College transcripts submitted by a public employee to a governmental body are not excepted by common-law privacy. Open Records Decision No. 467 (1987). The public has a legitimate interest in knowing the qualifications of its police officers which includes college transcripts. *See* Open Records Decision Nos. 470 (1987), 467 (1987). You must release the former officer's college transcript.

The personnel file also contains the former officer's W-4 form which you contend is excepted from required public disclosure pursuant to section 552.101. This office has determined that this information is excepted from required public disclosure pursuant to section 552.101 in conjunction with federal law. *See* Open Records Decision No. 600 (1992). You must withhold this information.

Section 18 of the former officer's application for employment contains information about his financial status. You contend that some of the information in this section is protected by common-law privacy and is, therefore, excepted from required public disclosure. Included in this section are questions about outside income, home ownership, bank accounts, credit obligations, and some "yes" or "no" questions about personal financial standing related to credit rating, filing bankruptcy, and repossession.

Financial information concerning an individual is in some cases protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual--including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history--ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 (1983) at 3; *see also* 626 (1994) at 3, 545 (1990). We note that the financial information submitted under sections 18C, D, and E, is not detailed financial information, but only "yes" or "no" answers to questions about the former officer's financial status. Accordingly, the answers to these questions are not protected by a common-law right of privacy. The portions of the personal financial information section on the submitted application that are protected by common-law privacy and that you must withhold pursuant to section 552.101 are the portions we have marked of sections 18A and 18B.

Included among the documents submitted for our review is a form titled Texas Municipal Retirement System Personal Data. You contend that some of the information on the form is protected by common-law privacy. Items twenty and twenty-one are not protected by common-law privacy. The beneficiary designation information is excepted from required public disclosure pursuant to section 552.101. *See* Open Records Decision No. 600 (1992) at 10.

Among the documents submitted for our review are physical exam reports prepared by a doctor that are confidential and the release of which is governed by the Medical Practice Act ("MPA"), V.T.C.S. article 4495b. Section 5.08(b) of the MPA provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" are confidential. Records must be kept confidential under article 4495b only if they are actually prepared or maintained

by a physician. Attorney General Opinion JM-229 (1984) at 2; Open Records Decision No. 343 (1982) at 1. Access to these records is governed by the MPA rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991) at 1; *see* Open Records Decision No. 565 (1990) (release of medical records). When access to records is governed by provisions outside of chapter 552 of the Government Code, exceptions under chapter 552 are not applicable to the release of the records. Open Records Decision No. 598 (1991) at 1. You may release these records only as provided under the MPA.

You contend that all of section 20 of the former officer's application referring to health records and insurance is excepted from required public disclosure by section 552.101. Not all medically related information is excepted from disclosure by common-law privacy. Open Records Decision No. 478 (1987). We conclude that the release of the responses to section 20C, 20D, and 20F would constitute an invasion of the former officer's privacy. We have marked the portions of section 20 which you must withhold from disclosure pursuant to common-law privacy as incorporated in section 552.101. You must release the remaining information in this section of the application.

You contend that disclosure of the former officer's driver's license number would constitute an invasion of the former officer's privacy and consequently must be withheld pursuant to section 552.101. This information is not excepted by common-law privacy. You must release the former officer's driver's license number.

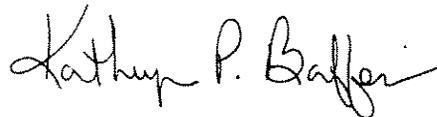
You contend that section 21 of the former officer's employment application is protected by common-law privacy and is excepted from required disclosure pursuant to section 552.101. We conclude that you may not withhold this information pursuant to section 552.101 as the public has a legitimate interest in the information contained in this portion of the application for a police officer. You have marked information in this section that shows the former officer's traffic violations. Driving record information is not confidential. *See* Gov't Code § 411.082(2)(B). The information about the former officer's traffic violations that he provided on his employment application may not be withheld from required disclosure. You must release this information to the requestor.

Finally, you have included a document reflecting a grid of classification and physical demand. It appears that you have marked a portion of the information on the grid. We assume that you are asserting that you may withhold the information marked pursuant to section 552.101. We conclude that the information marked is not confidential and is not protected by common-law privacy. You may not withhold this information pursuant to 552.101, and you must release this information to the requestor.

You also contend that all of section 26 of the former officer's application must be withheld from required public disclosure. In reviewing this information, we conclude that you may not withhold this section of the application as it is not protected by common-law privacy as incorporated into section 552.101.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/rho

Ref: ID# 36273

Enclosures: Marked documents

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(w/o enclosures)