



February 11, 1999

Mr. Richard Brown  
Assistant City Attorney  
Office of the City Attorney  
Municipal Building  
Dallas, Texas 75201

OR99-0422

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122193.

The Dallas Police Department (the “department”) received an open records request for a named police officer’s personnel file. You contend that portions of the officer’s file are excepted from required public disclosure pursuant to sections 552.101 and 552.117 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision.” (Emphasis added.) The dissemination of criminal history record information (“CHRI”) obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov’t Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. We conclude that in this instance the department must withhold all CHRI contained in the personnel file.

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<sup>1</sup>Because you do not contend that the remaining portions of the personnel file are excepted from required public disclosure, we presume the department has made the other information available to the requestor.

Section 552.101 of the Government Code also protects from public disclosure information coming within 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). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Some of the information at issue reveals details about the police officer's financial background. In Open Records Decision No. 373 (1993), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded as follows:

[a]ll 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 at 3 (1983).

Whether the public has a legitimate interest in an individual's personal financial information, however, must be determined on a case-by-case basis. *Id.*; *see also* Open Records Decision Nos. 600 (1992), 545 (1990). In this instance, no showing has been made that the public has a legitimate interest in the police officer's personal financial information. We have marked the information that the department must withhold pursuant to section 552.101 to protect the officer's common-law privacy interests.

Finally, we address the applicability of section 552.117 of the Government Code to the records at issue. Section 552.117(2) makes confidential all information that relates to the home address, home telephone number, or social security number of a peace officer as defined by article 2.12, Code of Criminal Procedure. Section 552.117(2) also makes confidential all information that reveals whether such a peace officer has family members. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). The department therefore must withhold all such information from the requestor pursuant to section 552.117(2). We have marked the information consistent with the above discussion.

We are resolving this matter with an 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 should 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,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive style with a large, prominent initial "D".

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/RWP/nc

Ref.: ID# 122193

Enclosures: Marked documents

cc: Ms. Patricia Armstrong  
P.O. Box 4717  
Dallas, Texas 75208  
(w/o enclosures)