



July 20, 1999

Mr. James R. Lindley  
Attorney at Law  
P.O. Box 1384  
Killeen, Texas 76540-1384

OR99-2040

Dear Mr. Lindley:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 125957.

The City of Nolanville (the "city"), which you represent, received two written requests for the police records pertaining to an incident involving the city's chief of police and another police officer, which resulted in the indictment of the chief of police for official oppression. The requestors also seek the personnel files of the police chief and the other officer. You contend the requested information is excepted from required public disclosure pursuant to sections 552.102 and 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Assuming that the criminal charges against the chief of police are still pending, we conclude that the city may withhold most of the information pertaining to the incident that gave rise to the indictment pursuant to section 552.108(a)(1).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Because you have raised no other exception to disclosure, the city must release these types of information, including a detailed description of the offense, in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . ." Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See Open Records Decision*

No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

Employee privacy under section 552.102(a) is less broad than common law privacy under section 552.101, however, because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981), 169 (1977). This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982), 298 (1981), 284 (1981). Only one document that pertains to the police officer's elections for insurance coverage, which we have marked, comports with this standard and thus must be withheld from the public.<sup>1</sup> *See* Open Records Decision No. 600 at 9-12 (1992). The city may not withhold any other information pursuant to section 552.102(a).

This does not end our discussion, however, of whether all of the information contained in the officers' personnel files must be released. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. The tax forms submitted to this office as part of the officers' personnel files constitute confidential "tax return information" and as such must be withheld pursuant to federal law. *See* 26 U.S.C. § 6103. Also, some of the requested documents constitute medical records that are made confidential under section 5.08 of article 4495b, V.T.C.S., and that other records constitute mental health records made confidential under section 611.002 of the Health and Safety Code; these records may be released only in accordance with the provisions of those statutes.

We additionally note that the police officer's personnel file includes an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the

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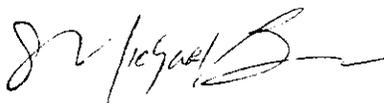
<sup>1</sup>We note, however, that one of the requestors is an attorney representing the police officer. This requestor has a special right of access, pursuant to section 552.023 of the Government Code, to information regarding his client that is otherwise excepted from public disclosure on privacy grounds. Consequently, the city may not withhold the insurance information from this particular requestor pursuant to common-law privacy.

United States Code, which provides that the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Texas Public Information Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that Form I-9 is excepted from public disclosure pursuant to section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

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 city must withhold all such information from the public pursuant to section 552.117(2).<sup>2</sup> The remaining information contained in the officers’ personnel files must be released, except as discussed above.

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.

Sincerely,



Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/RWP/eaf

Ref.: ID# 125957

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<sup>2</sup>Again, the requestor representing the police officer has a special right of access to this information pursuant to section 552.023 of the Government Code.

Encl. Marked documents

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(w/o enclosures)

cc: Mr. George L. Griffith  
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