



October 14, 1999

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR99-2933

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128123.

The City of Garland (the "city") received a request for the personnel and internal affairs records of the officers involved in a specific shooting. You claim that the responsive internal affairs documents must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. You also claim that portions of the officers' civil service personnel files may be withheld under sections 552.101 and 552.117(2) of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." You represent that some of the documents at issue are records maintained by the Garland Police Department under section 143.089(g) of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the city's police department is required to maintain as part of the police officer's civil service file, and one that the city's police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) reads as follows:

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 [of the civil-service commission] 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.

Subsection (g) authorizes city police and fire departments to maintain for their own use a file on a police officer or fire fighter that is separate from the file maintained by the city civil service commission. "The department may not release any information contained in the department file to any agency or person," but instead "the department shall refer to the director [of the civil-service commission] 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." Local Gov't Code § 143.089(g); see *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied).

The court in *City of San Antonio* addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied) (in construing section 143.089, the court found general legislative policy that allegations of misconduct against police officers and fire fighters not be subject to compelled disclosure unless they have been substantiated and resulted in disciplinary action). You inform this office that the submitted "[i]nternal affairs files are maintained by the Garland Police Department as part of each officers' departmental personnel file maintained for department use." Consequently, if the requested records are maintained only within the section 143.089(g) file, the submitted records are confidential and may not be disclosed. We note, however, that some of these documents relate to a criminal investigation. Thus, if these records exist elsewhere, outside the section 143.089(g) file, these records would be subject to disclosure under the Public Information Act.

As for the information held in the officers' civil service files, you claim that all or portions of these documents may be withheld under sections 552.101 and 552.117. You first assert that certain information contained within these documents is excepted from public disclosure by section 552.117 of the Government Code. You have highlighted this information for our review. Section 552.117(2) provides that information is excepted from disclosure if it relates to a peace officer's home address, home telephone number, social security number, or reveals whether the peace officer has family members. See Open Records Decision No. 622 (1994) (concluding that section 552.117 excepts from disclosure

former home addresses and former home telephone numbers). Thus, we agree that the information you have marked must be withheld under this exception.

You have also marked the officers' personal financial information which you claim is protected from disclosure under the doctrine of common-law privacy. Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *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 from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). After careful review, we agree that the information you have marked must be withheld under common-law privacy. Open Records Decision Nos. 600 (1992), 545 (1990) (personal financial information not relating to financial transaction between individual and governmental body is protected by common-law privacy). We note, however, that birth dates and the names of universities are not protected from disclosure under section 552.101.

We also note that employee W-2 and W-4 forms are excepted from disclosure by title 26, section 6103(a) of the United States Code. Open Records Decision Nos. 600 (1992), 226 (1979). Therefore, the city must withhold federal tax return information from public disclosure under section 552.101.

Finally, the Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

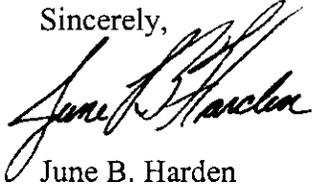
(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore, the city must withhold the copy of the Texas drivers' license, driver's license numbers, and motor vehicle registration information pursuant to section 552.130.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being particularly prominent.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 128123

Encl. Marked documents

cc: Ms. Jennifer Emily
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)