



February 8, 2001

Mr. Mark A. Flowers  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2001-0493

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144014.

The City of Midland Police Department (the "department") received a request for all information on a former police officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information, Exhibits B-E.

We first note that you previously received a similar request for information relating to the named police officer from a different requestor. We issued a ruling on that request in Open Records Letter Ruling No. OR2000-3055 (2000). We find that you must follow OR2000-3055 with respect to the information we held to be subject to section 1701.306 of the Occupations Code as well as section 611.002(a) of the Health and Safety Code. However, because much of the remaining information was released to the previous requestor

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<sup>1</sup> We note that you received the request for information from another governmental body. Generally, a governmental body, such as the department, may transfer information to another governmental body subject to the Act without violating the confidentiality of the information or waiving exceptions to disclosure. *See* Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); Open Records Decision No. 661 at 3 (1991). However, interagency transfer of information is prohibited when a confidentiality statute specifically enumerates specific entities to which the release of confidential information is authorized and the receiving governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995), JM-590 at 4-5 (1986); Open Records Decision No. 655 (1997).

under section 552.023, which does not apply to the current requestor, we address your current arguments with respect to the information that is not subject to section 1701.306 of the Occupations Code and section 611.002(a) of the Health and Safety Code.

You contend that Exhibits B and D are excepted from public disclosure under section 552.108(a)(2).<sup>2</sup> Section 552.108(a)(2) excepts from public disclosure information maintained by a law enforcement agency that concerns an investigation that did not result in conviction or deferred adjudication. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex.App.--El Paso 1992, writ denied) (section 552.108 applies where criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 applies to IAD investigation file when criminal charge against officer results from investigation of complaint against police officer). You state that Exhibits B and D contain documents that relate to an investigation that did not result in a conviction or deferred adjudication. Specifically, you state that the trials of the alleged crimes at issue in the documents resulted in hung juries and mistrials. After reviewing your arguments and Exhibits B and D, we conclude that these exhibits may be withheld under section 552.108(a)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. 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). Thus, you must release the type of information that is considered to be front page offense report information, even if that information is not actually on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Therefore, basic information found in Exhibits B and D must be released under section 552.108(c). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

Next, you claim that Exhibit E contains information that is excepted from disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

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<sup>2</sup> We note that you indicate you have already released the court documents contained in Exhibit B.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Exhibit E contains CHRI information. While the instant request appears to have been made by another criminal justice agency, it does not appear that the information is sought for a criminal justice purpose. Therefore, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990)*. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the information that must be withheld.

Exhibit E also contains a polygraph examination report. Polygraph results are confidential under section 1703.306 of the Occupations Code. However, section 1703.306(a)(1) of the Occupations Code states that the polygraph examination may be released to "the examinee or any person specifically designated in writing by the examinee." In this instance, the examinee of the submitted polygraph test consented to the full disclosure of all records concerning him, including "the results of any polygraph examinations." Therefore, the department must release the polygraph report in Exhibit E to the requestor.

Section 552.101 further excepts from disclosure information that is protected by the common law right of privacy. Gov't Code § 552.101; *see also Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with common law privacy 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. *Indus. Found.*, 540 S.W.2d at 685. The matters considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *Id.* at 683; *see also Open Records Decision No. 659 at 5 (1999)*. Likewise, prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy. However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983)*. Thus, a public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy. ORD 600 (TexFlex benefits), 545 (deferred compensation plan). Likewise, an employee's allocation of his salary toward membership dues in a union is confidential. However, the salary of a public employee and an employee's participation in an insurance program funded wholly or partially by the state are not excepted from disclosure. *Open*

Records Decision Nos. 600 (1992), 342 (1982). Therefore, only the details of payroll-related transactions that were funded entirely by the employee qualify as personal financial information excepted from disclosure under section 552.101 and common law privacy. In this instance, Exhibit E contains information that relates to the requestor which reveals matters that are excepted from public disclosure under section 552.101 in conjunction with common law privacy. We have marked this information.

You also contend that portions of Exhibit E are excepted under section 552.117 of the Government Code. Section 552.117(2) requires the department to withhold information pertaining to a current or former peace officer if the information relates to the home address, home telephone number, or social security number of that peace officer, or reveals whether the peace officer has family members. We have marked the information that must be withheld under section 552.117(2).<sup>3</sup>

With respect to Exhibits C and E, you claim that certain information is excepted under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer<sup>4</sup> that if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). While Exhibits C and E contain the photographs of the named peace officer who is the subject of the request for information, the named officer gave his full consent for the disclosure of all records concerning him held by the department, including his employment records. Therefore, the department may release the photographs to the requestor.

Finally, you claim portions of Exhibit C are excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(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]

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<sup>3</sup> We note that some of the information protected under section 552.117(2) is contained in completed evaluations of the former police officer. Under section 552.022 of the Government Code, completed evaluations are made expressly public unless they are confidential under other law, such as section 552.117, or are excepted from disclosure under section 552.108 of the Government Code.

<sup>4</sup> "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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

We note that both Exhibits C and E contain Texas driver's license numbers, license plate numbers, and vehicle identification numbers that are excepted from disclosure under section 552.130. We have marked the information that must be withheld under section 552.130.

In summary, the department must withhold the marked section 552.117 information contained in Exhibit E. The department must withhold CHRI that appears in Exhibit E pursuant to section 411.083 of the Government Code. The department also must withhold the declarations of psychological and emotional health and medical conditions contained in Exhibit E under section 1701.306 of the Occupations Code. The department must withhold the psychological evaluation report that appears in Exhibit E under Health and Safety Code section 611.002. The department may release this report only in accordance with Health and Safety Code sections 611.004 and 611.0045. Likewise, the department must withhold the Texas driver's license, license plate, and vehicle identification number information contained in Exhibits C and E. The department must release the polygraph test in Exhibit E pursuant to section 1703.306(a)(1) of the Occupations Code. The department may withhold Exhibits B and D pursuant to section 552.108(a)(2). However, the department must release basic information regarding those exhibits under section 552.108(c).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

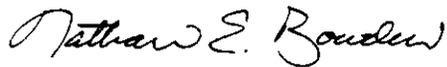
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/seg

Ref: ID# 144014

Encl: Submitted documents

cc: Officer Amy Padron 2590  
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(w/o enclosures)