



May 2, 2002

Mr. Sim W. Goodall
Police Legal Advisor
Arlington Police Department
P.O. Box 1065
Arlington, Texas 76004-1065

OR2002-2310

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162266.

The Arlington Police Department (the "department") received a request for fifteen categories of information concerning a named police officer. You indicate that you will be releasing some information to the requestor, have informed the requestor that the department does not maintain information responsive to several categories of the request, and have provided the requestor with an itemized estimate of charges in accordance with section 552.2615 of the Government Code. You claim that portions of the information you have submitted to this office are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the arrest reports submitted as Exhibits B-1 through B-7 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977).* You state that these reports relate to pending criminal cases. Based upon this representation, we conclude that the release of reports B-1 through B-7 would interfere with the detection, investigation, or prosecution of crime. *See 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) (court delineates law enforcement interests that are present in active cases).*

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *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); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold the remaining, you may choose to release all or part of Exhibits B-1 through B-7 that is not otherwise confidential by law. *See* Gov't Code § 552.007.¹

We turn now to Exhibit D, which is an arrest report relating to a juvenile. Section 552.101 of the Government Code encompasses confidentiality provisions such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

¹ We note that motor vehicle record information has been redacted from the submitted arrest reports. You do not assert, nor has our review of our records indicated, that you have been granted a previous determination to withhold such information without seeking a ruling from this office. Because motor vehicle record information is not included in the basic information that must be released under 552.108(c), being deprived of the redacted information does not inhibit our ability to make a ruling *in this instance*. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. In addition, please note that section 552.130 excepts from disclosure only motor vehicle record information *issued by this state*. Some of the information that you have redacted was issued by other states and therefore is not excepted by section 552.130.

Exhibit D involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Therefore, Exhibit D is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

We next address Exhibit E. You claim that some information in this exhibit is protected by common law privacy, which is incorporated into the Public Information Act by section 552.101 of the Government Code. Common law privacy protects information if it: (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

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 but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). In addition, this office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history), certain personal choices regarding financial transactions between the individual and the governmental body, *see* Open Records Decision No. 600 (1992) (federal tax Form W-4; designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Having reviewed Exhibit E, we conclude that some information, which we have marked, is protected by common law privacy and must be withheld under section 552.101.

You also contend that Exhibit E-9 is made confidential by law. Section 552.101 encompasses information made confidential by other statutes such as section 825.507 of the Government Code, which provides in part that "[i]nformation contained in records that are in the custody of the retirement system concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is confidential under section 552.101, and may not be disclosed in a form identifiable with a specific individual." We agree that the documents in Exhibit E-9 are subject to section 825.507 of the Government Code and find that none of the

exceptions in that section apply in this instance. Accordingly, you must withhold Exhibit E-9 under section 552.101 of the Government Code.

Exhibit E also contains a W-4 tax form. Section 552.101 encompasses information made confidential by section 6103(a) of title 26 of the United States Code, which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the department must withhold the W-4 form that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

We also note that Exhibit E contains other information that must be withheld under 552.101 of the Government Code because it is made confidential by federal law. The Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12101 *et seq.*, provides that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. In addition, information obtained in the course of a "fitness for duty examination," conducted to determine whether an employee is still able to perform the essential functions of his job, is to be treated as a confidential medical record. 29 C.F.R. § 1630.14(c). *See also* Open Records Decision No. 641 (1996). The Equal Employment Opportunity Commission (the "EEOC") has determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). We have marked information in Exhibit E that is confidential under the ADA and must therefore be withheld under section 552.101.

Furthermore, the submitted documents contain fingerprint information that is subject to sections 559.001, 559.002, and 559.003 of the Government Code. These provisions of the Government Code provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

It does not appear to this office that section 559.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold the fingerprints, which we have marked, under section 552.101 in conjunction with section 559.003 of the Government Code.

Section 552.101 also encompasses information made confidential by Title 3, Subtitle B of the Occupations Code, commonly known as the Medical Practice Act (the "MPA"). Occ. Code §§ 151.001-165.160. Exhibit E contains medical records, access to which is governed by the MPA, section 159.002 of which provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Medical records must be released upon the patient's properly executed written consent. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We agree that a document that we have marked in Exhibit E-6 is a medical record and is therefore subject to the MPA. However, the other documents in this exhibit are not subject to the MPA and must therefore be released, after you have redacted the information that we indicate is subject to other mandatory exceptions in this ruling.

Exhibit E also contains information that is excepted from disclosure under section 552.117(2). The department must withhold those portions of the records that reveal the officers' home addresses, home telephone numbers, social security numbers, and family information. The department must also withhold the officer's former home addresses and telephone information from disclosure. *See* Open Records Decision No. 622 (1994). We have marked information that the department must withhold under section 552.117(2).

You also contend that a portion of Exhibit E is excepted by section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer² 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. Gov't Code § 552.119 (a)(1)-(3). This section also provides that a photograph made exempt from disclosure by this section may be made public only if the peace officer gives written consent to the disclosure. *Id.* § 552.119(b); *see also* Open Records Decision No. 502 (1988). The submitted photograph depicts a peace officer, and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officer has executed a written consent to disclosure. Thus, we agree that you must withhold the marked photograph in Exhibit E.

You assert that Exhibit E-8 is excepted from disclosure by section 552.122 of the Government Code. Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994). Having reviewed the submitted questions, we agree that they are "test items" as

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

contemplated by section 552.122(b). Therefore, you may withhold the questions and answers that we have marked in Exhibit E-8 under section 552.122(b). However, the answer sheet contained in Exhibit E-8 does not tend to reveal the questions themselves and may not be withheld.

Exhibit E also contains the named police officer's driver's license number, which you contend is excepted under section 552.130. Section 552.130 of the Government Code 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]
- (2) a motor vehicle title or registration issued by an agency *of this state*; or
- (3) a personal identification document issued by an agency *of this state* or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a) (emphasis added).

By its terms, section 552.130 excepts from disclosure only motor vehicle records issued by the State of Texas. We have marked the officer's Texas driver's license number, which you must withhold under section 552.130. However, the driver's license number you have marked appears to have been issued by the State of Oklahoma and is therefore not excepted under section 552.130 and may not be withheld.

In summary, the department may withhold Exhibit B, except for basic information, under section 552.108. The questions and answers we have marked in Exhibit E-9 may also be withheld under section 552.122. The department must withhold Exhibit D in its entirety as well as the information that we have marked in Exhibit E as being excepted under sections 552.101, 552.117, 552.119, and 552.130. All other information must be released.

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).

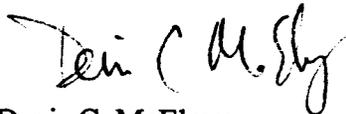
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 162266

Enc. Marked documents

c: Mr. Michael Phillips
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(w/o enclosures)