



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2003

Ms. Traci S. Briggs
Assistant City Attorney
City of Killeen
402 North Second Street
Killeen, Texas 76541-5298

OR2003-8703

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192182.

The Killeen Police Department (the "department") received a request for the personnel file of a named former officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 143.089(g) of the Local Government Code. We understand that the City of Killeen is a civil service city under chapter 143 of the Local Government Code.

Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that a police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against a police officer, section 143.089(a)(2) requires the department to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service

file maintained under section 143.089(a).¹ See *Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* at 122. Such records are not confidential and are subject to release under the Public Information Act (the “Act”) unless an exception under the Act applies. See *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 948-49 (Tex. App.—Austin 1993, writ denied); see also Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information that reasonably relates to an officer’s employment relationship with the police department and that is maintained in a police department’s internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d at 949.

You indicate that the information in Exhibit D is maintained in the police department’s personnel file pursuant to section 143.089(g). Based on your representations and our review, we find that the information at issue is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. However, we note that Exhibit D includes documents, which we have marked, that relate to disciplinary action taken against a police officer. These documents are required to be placed in the civil service commission’s personnel file under section 143.089(a) of the Local Government Code and, therefore, subject to release under the Act. *Abbott*, 109 S.W.3d at 122.²

However, two of these documents are Reports of Separation of License Holder addressed to the Texas Commission on Law Enforcement (the “commission”). These documents, commonly referred to as “F-5” forms, are made confidential by section 1701.454 of the Occupations Code. Section 1701.452 requires that a law enforcement agency submit a report to the commission regarding an officer licensed under chapter 1701 who either resigns from the law enforcement agency or whose appointment with the law enforcement agency is terminated. See Occ. Code § 1701.452. Section 1701.454 provides in relevant part:

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov’t Code §§ 143.051-.055.

² The city attorney states that “because all records are in the possession of the city of Killeen and the city attorney’s office would ultimately have to assist the civil service director in responding, the requestor has not been referred to the director of civil service so as to minimize delay.” Thus, you are responding on behalf of the department and the civil service director.

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454. Therefore, the department must withhold the submitted F-5 forms pursuant to section 552.101 in conjunction with section 1701.454.

You indicate that the information in Exhibit E is maintained in the civil service file by the director of civil service pursuant to section 143.089(a). Exhibit E includes the former officer's W-4 forms. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). We determine that the submitted W-4 forms are tax return information and, therefore, excepted from disclosure under section 552.101 as information made confidential by federal law.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). This office has also ruled, however, that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). We have marked personal financial information in Exhibit E that is excepted from disclosure under section 552.101 in conjunction with common-law privacy.

You assert that portions of Exhibit E may be excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone

number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. We are unable to determine from the information provided whether the former employee at issue is still a licensed peace officer. However, the submitted information does include a document that indicates the former employee elected to keep his personal information confidential prior to the time the present request was made. If the former employee at issue is a licensed peace officer, the department must withhold the information we have marked under section 552.117(a)(2). If the former employee is no longer a licensed peace officer, then the department must withhold the marked information under section 552.117(a)(1).

We note that Exhibit E includes Texas motor vehicle information. Section 552.130 of the Government Code provides in pertinent part:

(a) Information is excepted from the requirements 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[.]

Therefore, you must withhold the marked Texas driver's license number under section 552.130.

We also note that a social security number in Exhibit E may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the department must withhold Exhibit D, except for the documents we have marked, under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The department must withhold the F-5 forms in Exhibit D under section 552.101 in conjunction with section 1701.454 of the Occupations Code. The department must withhold the W-4 forms in Exhibit E under section 552.101 in conjunction

with federal law. The department must withhold the personal financial information in Exhibit E under section 552.101 in conjunction with the doctrine of common-law privacy.³ The department must withhold the home address, telephone number, social security number, and family member information in Exhibits D and E under section 552.117. The department must withhold the Texas motor vehicle information in Exhibit E under section 552.130. Finally, the department may be required to withhold the marked social security number in Exhibit E under section 552.101 in conjunction with federal law. The department must release the remaining information in Exhibit E and the marked document in Exhibit D.

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³ As we are able to make this determination, we do not reach your arguments under section 552.136 for this information.

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,

A handwritten signature in black ink, appearing to read "Amy Peterson", with a horizontal line extending to the right.

Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 192182

Enc. Submitted documents

c: Mr. Hollis Lewis
202 West 6th
Cameron, Texas 76520
(w/o enclosures)