



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2004

Ms. Maleshia B. Farmer
Assistant City Attorney
City of Forth Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2004-4471

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202621.

The City of Fort Worth (the "city") received a request for personnel records, Internal Affairs investigations, and other information concerning a named officer. You state that you will release some of the information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The submitted documents include information obtained in the course of conducting a polygraph examination. You claim that this information is confidential under section 1703.306 of the Occupations Code. Section 1703.306 provides that "a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination" except to certain categories of people. Because the requestor does not fall within any of the enumerated categories, pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code, you must withhold the polygraph information.

We note that the submitted information contains W-4 forms that are excepted from disclosure under section 552.101 of the Government Code. Employee W-4 forms are confidential under section 6103(a) of title 26 of the United States Code. *See* 26 U.S.C.

§ 6103(a); *see also* Open Records Decision No. 600 (1992). Accordingly, the city must withhold the W-4 forms under section 552.101 as information made confidential by law.

You also claim that some of the submitted information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” In *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public under section 552.102 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).

This office has found that the following types of information are excepted from required public disclosure under common law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992) (Employee’s Withholding Allowance Certificate; designation of beneficiary of employee’s retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989); an individual’s criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (*citing United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); and 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

We have marked the personal financial information that must be withheld pursuant to section 552.101 and common law privacy. Although a compilation of a person’s criminal history generally implicates that individual’s right to privacy, we find that, in this instance, the public has a legitimate interest in the officer’s background. *See* Open Records Decision Nos. 562 at 9, n.2 (1990) (public has interest in preserving credibility and effectiveness of police force), 444 (1986) (concluding that public has obvious interest in having access to information concerning qualifications of governmental employees, particularly employees who hold positions as sensitive as those held by members of law enforcement), 423 at 2 (1984) (scope of public employee privacy is narrow). *But see United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that criminal

history compilation is generally protected by common law privacy). Accordingly, in this instance, the city may not withhold the marked criminal history record information under common law privacy. We note that you have marked additional information as excepted under section 552.101 and common law privacy. However, you have not explained, nor can we discern, how this information is confidential under section 552.101. *See* Gov't Code § 552.301 (providing that it is governmental body's burden to explain the applicability of claimed exceptions to disclosure). Accordingly, you may not withhold this information under common law privacy and it must be released.

Next, some of the information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the current and former home address and telephone number, social security number, and the family member information of a peace officer whether the officer made an election under section 552.024 of the Government Code or complies with section 552.1175 of the Government Code. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. We note that section 552.117 does not encompass a peace officer's former spouse as family member information.

You claim that the Texas motor vehicle information contained in the submitted documents is excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant 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 Texas motor vehicle information we have marked under section 552.130 of the Government Code.

Finally, one of the records contains an insurance policy number. We note that section 552.136 of the Government Code excepts this information from disclosure. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." The city must, therefore, withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, you must withhold the polygraph information under section 1703.306 of the Occupations Code and the W-4 forms under applicable federal law. We have marked the personal financial information that must be withheld under common law privacy. We have marked the information that must be withheld under sections 552.117(a)(2), 552.130, and 552.136. The remaining 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "Melissa Vela-Martinez", with a long horizontal flourish extending to the right.

Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 202621

Enc. Submitted documents

c: Mr. Chris Turnbow
Legal Assistant
The Coffey Firm
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Fort Worth, Texas 76117
(w/o enclosures)