



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 31, 2005

Mr. Nathan C. Barrow  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2005-08016

Dear Mr. Barrow:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231448.

The City of Fort Worth (the "city") received a request for a named city police officer's "personnel file, including but not limited to all disciplinary history" and a second request from the same requestor for the same officer's "internal affairs file, including but not limited to all disciplinary history." You state that the city will release most of the requested information but claim that the submitted information is excepted from disclosure under sections 552.101, 552.115, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information you submitted in response to the first request includes federal tax return information. Section 552.101 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. Federal tax return information is confidential under section 6103(a) of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a). The term "return information" includes "the nature, source, or amount of income" of a taxpayer. Our office has specifically held that a governmental body must withhold a W-4 form in its entirety. Open Records Decision No. 600 at 9 (1992).

Therefore, the city must withhold the submitted W-4 forms under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

Section 552.101 also encompasses section 143.089 of the Local Government Code. We understand that the city 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 the civil service director is required to maintain, and an internal file that the 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 an officer, it is required by section 143.089(a)(2) 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).<sup>1</sup> *Abbott v. City of 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.* Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the information submitted in response to the second request contains “a group of internal affairs investigations involving the named officer that did not result in any disciplinary action.” You further indicate that these investigation files are maintained by the police department for internal use. Based on your representations, we agree that the information at issue, which is labeled Exhibit C, is confidential under section 143.089(g) of the Local Government Code, and the city must withhold it pursuant to section 552.101 of the Government Code.

You claim that some of the submitted information consists of criminal history record information (“CHRI”), which is also encompassed by section 552.101. CHRI that is generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. 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. 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

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<sup>1</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

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. 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. However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See Gov't Code* § 411.082(2)(B). After reviewing the information at issue, we agree that some of it consists of CHRI. Accordingly, we have marked the CHRI that must be withheld under section 552.101 of the Government Code. The remaining information at issue is not CHRI and may not be withheld on that basis.

You also argue that the submitted fingerprint information is excepted from disclosure under section 552.101 in conjunction with chapter 560 of the Government Code. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See Gov't Code* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us and the submitted information does not indicate that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, we agree that the submitted fingerprint information is confidential under section 560.003 and must be withheld under section 552.101.

The submitted information includes an L-2 Declaration of Medical Condition and an L-3 Declaration of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education (the "commission"). These declarations are confidential pursuant to section 1701.306 of the Occupations Code, which provides:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining

psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306. Therefore, the city must withhold the L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code, which provides that “[a] governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.” Occ. Code § 1703.306(b). Accordingly, the city must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

You claim that a portion of the remaining information is protected by common law privacy, which is also encompassed by section 552.101. The common law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: 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 personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee’s retirement benefits and optional insurance coverage). However, 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 Record Decision 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities); Gov’t Code § 552.022(a)(2) (providing for required public disclosure of name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of governmental body). We have marked the information that is confidential under common law privacy and excepted from release under sections 552.101 and 552.102.

The city also asserts that the submitted birth certificate must be withheld under section 552.115 of the Government Code. This section provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that “a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official.” Since section 552.115 only applies to a birth certificate maintained by the bureau of vital statistics or local registration official, the city may not withhold the certificate of birth registration pursuant to that provision. *See* Open Records Decision No. 338 (1982).

We note that section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer. You state that you have withheld information under section 552.117(a)(2) in accordance with the previous determination in Open Records Decision No. 670 (2001) (stating that governmental body may withhold peace officer’s personal information from disclosure under section 552.117(a)(2) without necessity of requesting decision on that information from attorney general); *see also* Open Records Decision No. 673 (2001) (discussing types of previous determinations issued by this office). We have marked additional information in the submitted exhibits that must be withheld under section 552.117(a)(2).

You claim that some of the remaining information is confidential under section 552.130 of the Government Code, which 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[.]

Gov’t Code § 552.130. We have marked the Texas motor vehicle information that must be withheld under section 552.130. We note, however, that information relating to a driver’s license and motor vehicle title or registration issued by another state or country may not be withheld under section 552.130.

Finally, we note that the submitted information contains insurance policy numbers. 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.” Gov’t

Code § 552.136. The city must, therefore, withhold the marked insurance policy number under section 552.136.

In summary: (1) the submitted W-4 forms are confidential under section 6103 of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code; (2) the information submitted as Exhibit C in response to the second request must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code; (3) we have marked information that must be withheld under section 552.101 in conjunction with section 411.083 of the Government Code; (4) the fingerprint information we have marked must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code; (5) the submitted Declaration of Medical Condition and Declaration of Psychological and Emotional Health are confidential under 1701.306 of the Occupations Code and must be withheld under section 552.101; (6) the submitted polygraph examination information must be withheld under section 552.101 in conjunction with 1703.306 of the Occupations Code; (7) we have marked information that must be withheld under section 552.101 in conjunction with common law privacy; (8) the city must withhold the additional information we have marked under section 552.117(a)(2) of the Government Code; (9) the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; and (10) the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The remaining submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 231448

Enc. Submitted documents

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