



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2005

Ms. Leann D. Guzman
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2005-10063

Dear Ms. Guzman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 235844.

The Fort Worth Police Department (the "department") received a request for 1) the personnel files of two police officers, 2) documents related to other drivers stopped for DWI by the two police officers that did not result in arrest, 3) performance reviews and/or evaluations of the two police officers, 4) documents relating to the two police officers' assignment to a DWI Squad or Task Force prior to February 3, 2005, and 5) documents relating to quotas applicable to the two police officers. You state that you will release a portion of the requested information to the requestor. You claim that the remaining requested 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.

Initially, we note that you have submitted some information that was not requested. This decision does not address the arguments made against disclosure of the non-responsive information, which the department is not required to release.

Next, we note that the department has not complied with the procedural requirements of section 552.301 of the Government Code in requesting this decision. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request: 1) written comments stating why

the governmental body's claimed exceptions apply to the information that it seeks to withhold; 2) a copy of the written request for information; 3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and 4) the specific information that the governmental body seeks to withhold or representative sample of the information if it is voluminous. *See Gov't Code § 552.301(e)(1)(A)-(D).*

You state that you received the request on August 16, 2005. Thus, you were required to submit the responsive information and your comments stating why your claimed exceptions apply to the information you seek to withhold by September 7, 2005. However, you did not submit the responsive information or your comments until September 8, 2005. By submitting the responsive information later than the fifteenth business day deadline, you have failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome the presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 382-83 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because sections 552.101, 552.117, 552.130, and 552.136 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these exceptions.

You claim that Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses confidentiality provisions such as section 1701.306 of the Occupations Code. The submitted information in Exhibit C includes L-2 Declarations of Medical Condition and L-3 Declarations of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education (the "commission"), as well as correspondence regarding the declarations. Section 1701.306, provides in relevant part:

(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 department must withhold the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Exhibit D contains polygraph examination reports. Section 552.101 also encompasses section 1703.306 of the Occupations Code, which provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Therefore, the department must withhold Exhibit D under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Exhibit E contains fingerprint information. Section 552.101 also encompasses Chapter 560 of the Government Code, which 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 the Public Information Act (the "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, the department must withhold the fingerprint information we have marked in Exhibit E under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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. 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 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. *See* Gov't Code § 411.082(2)(B) (term CHRI does not include driving record information). You must withhold the CHRI we have marked in the submitted documents.

Additionally, we note that a portion of the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 411.192 of the Government Code, which governs the release of all information maintained by DPS concerning the licensure of individuals to carry a concealed handgun. Section 411.192 provides:

[DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. [DPS] shall, on written request and payment of a reasonable fee to cover costs of copying,

disclose to any other individual whether a named individual or any individual whose full name is listed on a specified written list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552, Government Code, except that the applicant or license holder may be furnished a copy of disclosable records on request and the payment of a reasonable fee.

Gov't Code § 411.192. The submitted records contain information concerning an individual's concealed handgun license. Because section 411.192 makes this information confidential, we conclude that the department must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.

Section 552.101 also encompasses the doctrine of common law privacy, which 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this office have found that personal financial information not related to a financial transaction between an individual and a governmental body is generally protected by common law privacy. *See* 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 program, among others, are protected under common law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common law privacy). 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 *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); 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 reviewed the submitted records and marked or stapled the private information that must be withheld by the department under section 552.101 of the Government Code in conjunction with common law privacy.

Next, we note that the requested records contain information that is excepted from disclosure under section 552.117(a)(2). Section 552.117(a)(2) excepts from disclosure “information that relates to the home address, home telephone number, or social security number” of a peace officer, or that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175.¹ See Gov’t Code § 552.117(a)(2). The department must also withhold the officers’ *former* home addresses and telephone information from disclosure. See Open Records Decision No. 622 (1994). We have marked the information that the department must withhold pursuant to section 552.117(a)(2).

The remaining submitted documents also contain Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the department must withhold the Texas motor vehicle record information we have marked in the remaining submitted documents.

The remaining documents also contain information that is subject to section 552.136 of the Government Code. Section 552.136 provides 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. Accordingly, the department must withhold the information we have marked pursuant to section 552.136 of the Government Code.

We note that the submitted information also contains a social security number of an individual other than the specified officers. Section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the social security number we have marked under section 552.147.³

In summary, the department must withhold the following pursuant to section 552.101: 1) the information we have marked in conjunction with section 1701.306 of the Occupations Code; 2) Exhibit D in conjunction with section 1703.306 of the Occupations Code; 3) the

¹Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. See Crim. Proc. Code art. 2.12.

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

information we have marked in Exhibit E in conjunction with section 560.003 of the Government Code; 4) the information we have marked in conjunction with section 411.192 of the Government Code; 5) the information we have marked or stapled in conjunction with common law privacy; and 6) the information we have marked under federal law or subchapter F of Chapter 411 of the Government Code. The department must withhold the information we have marked under sections 552.117, 552.130, 552.136, and 552.147. The remaining 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); *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 Office of the Attorney General 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/seg

Ref: ID# 235844

Enc: Submitted documents

c: Mr. Homer G. Price
1707 Tremont Avenue
Fort Worth, Texas 76107
(w/o enclosures)