ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2005

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2005-11569

Dear Mr. Mann:

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# 238575.

The Garland Police Department (the "department") received a request for the requestor's application file. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.108 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," and encompasses information made confidential by other statutes. Gov't Code § 552.101. You raise section 143.089 of the Local Government Code, which pertains to personnel records of civil service employees. We understand that the City of Garland is a civil service city under chapter 143 of the Local Government Code. We note, however, that section 143.089 applies to personnel records of fire fighters and police officers employed by the city. Local Gov't Code § 143.089(a), (g). The records at issue pertain to an applicant who has not been employed by the Garland Police Department. As this information does not constitute personnel records of a city employee, we find that section 143.089 of the Local Government Code is not applicable. Furthermore, although you contend that a portion of the information at issue was obtained from the City of Irving's personnel files and remains protected from release pursuant to section 143.089(g), we note that subsection (g) creates a category of information that is not available for either public inspection or exchange with other governmental agencies requesting such information. Open Records Decision No. 562 at 6 (1990). Since this information may not be exchanged with other governmental bodies, we find that the protections under section 143.089(g) may not be transferred to other governmental bodies. Accordingly, we find that none of the submitted information may be

withheld under section 552.101 of the Government Code pursuant to section 143.089(g) of the Local Government Code.

You also raise section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). As noted, you specifically state that this individual has not been employed by the Garland Police Department. We therefore determine that the information at issue is not "information in a personnel file" and is consequently not excepted from disclosure under section 552.102.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI "means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions" but does not include "driving record information maintained by [the Department of Public Safety ("DPS")] under Subchapter C, Chapter 521, Transportation Code." Gov't Code § 411.082(2). CHRI obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law.

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. Gov't Code §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). The criminal history record information that we have marked in the submitted information must be withheld pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal regulations. We note that the requestor can obtain his own CHRI from DPS. Gov't Code § 411.083(b)(3).

Section 552.101 also encompasses the doctrine of common-law privacy. In *Industrial Foundation*, the Texas Supreme Court held that information is protected by common-law privacy 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. *Indus. Found. v. Tex. Indus. Accident Bd*, 540 S.W.2d 668 (Tex. 1976). The type 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. *Id.* at 683. We have marked the information that must be withheld under common-law privacy.

You also claim that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(2) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" *Id.* § 552.108(b)(2). However, section 552.108 is not generally applicable to the personnel records of law enforcement officers or to information relating to complaints involving law enforcement officers. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *see also* Open Records Decision Nos. 562 at 10 (1990) (predecessor to section 552.108(b) inapplicable to employment information in police officer's file), 361 at 2-3 (1983) (statutory predecessor to section 552.108(b) inapplicable to background information collected on unsuccessful applicant for employment with sheriff's department). Therefore, the department may not withhold any of the requested information under section 552.108.

We note that the submitted documents contain information pertaining to peace officers who are not employed by the department. Section 552.1175 of the Government Code provides in part:

> (b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:
>
> > (1) chooses to restrict public access to the information; and
> >
> > (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). If the individuals in question are still currently licensed peace officers and elect to restrict access to their personal information in accordance with section 552.1175, the department must withhold the information we have marked on the documents at issue. *See, e.g.*, Open Records Decision No. 678 (2003). Otherwise, this information must be released.

We note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore,

the department must withhold the social security numbers we have marked in the submitted information under section 552.147.[1]

The submitted information also contains an e-mail address obtained from a member of the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

> (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
>
> (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
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> (c) Subsection (a) does not apply to an e-mail address:
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> > (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
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> > (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
> >
> > (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
> >
> > (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.
>
> (d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b).

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[1]We 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.

You do not inform us that this individual has affirmatively consented to the release of the e-mail address contained in the submitted materials. The department must, therefore, withhold the e-mail address we have marked under section 552.137.

Finally, we note that some of the materials at issue are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the criminal history record information that we have marked in the submitted information must be withheld pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal regulations. The submitted documents also contain information pertaining to peace officers who are not employed by the department. If the individuals in question are still peace officers and elect to restrict access to their personal information in accordance with section 552.1175, the department must withhold the information we have marked on the documents at issue. Otherwise, this information must be released. The department must withhold the social security numbers we have marked in the submitted information under section 552.147. The department must withhold the e-mail address we have marked under section 552.137. The remaining information must be released to this requestor, but any copyrighted information may only be released in accordance with copyright law.[2]

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).

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[2]We note that the remaining documents include information that would ordinarily be withheld under laws and exceptions intended to protect the requestor's privacy. However, as the subject of such information, the requestor has a special right of access to personal information pertaining to him. *See* Gov't Code § 552.023(b). If the department receives a request for this information from someone other than the requestor, it must seek another ruling from this office.

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,

James Forrest
Assistant Attorney General
Open Records Division

JF/segh

Ref: ID# 2338575

Enc. Submitted documents

c: Mr. Kevin Hicks
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(w/o enclosures)