



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2006

Ms. Julie Ross  
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University Centre II  
1320 S. University Drive, Ste. 720  
Fort Worth, Texas 76107

OR2006-00401

Dear Ms. Ross:

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# 240248.

The City of Coppell (the "city"), which you represent, received a request for several categories of information regarding several named officers. You state that you have released some of the requested information, from which you redacted the officers' personal information under section 552.117(a)(2) of the Government Code.<sup>1</sup> You claim, however, that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains an accident report. 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 information protected by Texas Transportation Code Section 550.065(b), which provides that, except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release

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<sup>1</sup>*See* Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to chapter 552 of Government Code to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without necessity of requesting attorney general decision under Gov't Code § 552.117(a)(2)); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under Gov't Code § 552.301).

of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this instance, the requestor has not provided the city with at least two of the listed three pieces of information. Accordingly, we conclude that the city must withhold the submitted accident report form pursuant to section 552.101 in conjunction with section 550.065(c)(4) of the Transportation Code.

You claim that Exhibits 4-c, 6-b, and 7-b contain polygraph information. Section 552.101 of the Government Code encompasses section 1703.306 of the Occupations Code, which governs information obtained in the course of conducting a polygraph examination. 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. Occ. Code § 1703.306(a). The requestor does not fall within any of the enumerated categories; therefore, the city must withhold the polygraph information, which you have marked in Exhibits 4-c, 6-b, and 7-b under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

You claim that the marked information in Exhibit 8 is protected by section 58.007 of the Family Code, which is also encompassed by section 552.101 of the Government Code. Law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). In this instance, although you claim that the information at issue contains the records of a juvenile offender, you have not indicated the age of the suspect individual. Thus, you have failed to demonstrate that this information is a law enforcement record of a child as defined by section explain the applicability of the raised exception). Accordingly, none of the information in Exhibit 8 is confidential under section 58.007 and may not be withheld on that basis.

You also claim that Exhibits 4-b, 5-b, 6-b, and 7-b are protected by common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law 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. *Id.* at 683.

In this instance, you claim that Exhibits 4-b, 5-b, 6-b, and 7-b should be protected in their entirety by common-law privacy because they contain highly intimate or embarrassing information involving off-duty conduct by officers and sexual conduct. Generally, however, we note that only in instances of sexual assault or suicide, where it is demonstrated that the requestor knows the identity of the victim, as well as the nature of the incident, is the entirety of the information withheld to protect the victim's privacy. Here, although you seek to withhold the information at issue in its entirety, you have not demonstrated nor does the information reflect a situation in which this information must be withheld in its entirety on the basis of common-law privacy. Further, the named officers were investigated and disciplined as a result of the information at issue. We note that common-law privacy does not protect information about public employees' alleged misconduct or complaints made about public employees' job performance. *See* Open Records Decision Nos. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Accordingly, the city may not withhold any of the information in Exhibits 4-b, 5-b, 6-b, or 7-b under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim that the witness statements in Exhibits 4-b, 5-b, 6-b, 7-b, and 8 are excepted under section 552.101 of the Government Code in conjunction with informer's privilege. The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does

not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). Upon review, however, we find that you have not demonstrated that Exhibits 4-b, 5-b, 6-b, 7-b, or 8 contain any reports of violations of civil or criminal law to the city. Accordingly, we find that the city may not withhold any of the information at issue under section 552.101 and the informer's privilege.

You also claim that all of Exhibit 5-b, and the marked portions of Exhibits 8 and 9 contain information that is excepted under section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, section 552.108 is generally not applicable to the records of an internal investigation that is purely administrative in nature. See *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982).

In this instance, the information at issue relates to administrative investigations regarding several named officers. You do not inform us, and the documents do not otherwise indicate, that these investigations resulted in criminal investigations or prosecutions of any of the involved officers. Accordingly, the city may not withhold any portion of Exhibits 5-b or 8 under section 552.108 of the Government Code. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (finding that section 552.108 is not generally applicable to the to information relating to complaints involving law enforcement officers); *see also* Open Records Decision Nos. 562 at 10 (1990) (stating that law enforcement exception does not protect general personnel information about a peace officer or information concerning complaints filed against the officer), 361 at 2-3 (1983) (information relating to complaints against peace officer and disciplinary actions resulting therefrom not excepted under statutory predecessor of section 552.108). We note, however, that this office has concluded that section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment). You state that the marked information in Exhibit 9 contains information regarding the identities of city undercover police officers and other officers on sensitive assignments. Accordingly, based on your statements and our review of the information, we find that the city may withhold the information you have marked in Exhibit 9 under section 552.108(b)(1) of the Government Code.

We note that some of the submitted information is subject to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.<sup>2</sup> We note that you have redacted personal information of the peace officer pursuant to the previous determination of this office in Open Records Decision No. 670 (2001). In that decision, we determined that a governmental body may withhold a peace officer's personal information without the necessity of requesting an attorney general decision as to the applicability of the exception in section 552.117(a)(2) of the Government Code. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 670 (2001); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a)). Upon review, we agree that most of the information you have marked must be withheld under section 552.117(a)(2). We have marked for release information that may not be withheld under section 552.117(a)(2) of the Government Code.

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<sup>2</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

We have also marked additional information that must be withheld under section 552.117(a)(2) of the Government Code.

You also seek to withhold photographs and images on a videotape of some of the officers at issue pursuant to section 552.119 of the Government Code, which provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119.<sup>3</sup> Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer.<sup>4</sup> In this instance, you have not submitted any arguments explaining how the release of the images and pictures at issue would endanger the life or physical safety of the officers depicted. We therefore determine that the city may not withhold this information pursuant to section 552.119 of the Government Code.

You claim that the information marked in Exhibit 8 is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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]

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<sup>3</sup>As amended by Act of April 22, 2005, 79th Leg., R.S., S.B. 148, § 1 (effective May 3, 2005).

<sup>4</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. After reviewing the submitted information, we agree that you must withhold the Texas-issued motor vehicle record information you have marked in Exhibit 8 under section 552.130 of the Government Code.

In summary, the city must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(c)(4) of the Transportation Code. The city must withhold the marked information in Exhibits 4-c, 6-b, and 7-b under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The city may withhold the information you have marked in Exhibit 9 under section 552.108(b)(1) of the Government Code. The city must withhold most of the information you have marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code. The city must withhold the Texas-issued motor vehicle record information you have marked in Exhibit 8 under section 552.130 of the Government Code. 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).

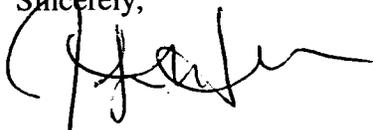
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 240248

Enc. Submitted documents

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