



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 2, 2006

Ms. Samantha Gowans  
Nichols, Jackson, Dillard, Hager, & Smith, L.L.P.  
1800 Lincoln Plaza  
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Dallas, Texas 75201

OR2006-04466

Dear Ms. Gowans:

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# 247980.

The City of Cedar Hill (the "city"), which you represent, received a request for all citations issued by four named officers during the first five months of 2005, the personnel files and training records of three other named officers, complaints that have resulted in disciplinary action against any of the named officers, and all incidents that any of the named officers have been investigated for. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that some of the submitted citations in Exhibit B are confidential under section 58.007 of the Family Code. 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 section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part 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). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. We note that records of citations for traffic offenses are not confidential under section 58.007. *See id.* §§ 51.02(16) (definition of traffic offense), 51.03(a) (delinquent conduct does not include traffic offense), 51.03(b) (conduct indicating need for supervision does not include traffic offense). Upon review of Exhibit B, we agree that the citations that you have marked are law enforcement records of juveniles engaged in delinquent conduct or conduct indicating the need for supervision that occurred after September 1, 1997. *See* Fam. Code § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). We have marked additional citations that are also subject to section 58.007. The city must withhold the marked citations from disclosure under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Next, you argue that much of the submitted information is subject to section 552.102 of the Government Code, which 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). In *Hubert v. Harte-Hanks Texas 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 v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. Therefore, we will address common law privacy under section 552.101 together with your claim under section 552.102.

Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. 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.

This office has also found that the following types of information are excepted from required public disclosure under common law privacy: 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); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Additionally, a public employee's allocation of part of the employee's salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common law privacy. *See, e.g.,* Open Records Decision Nos. 600 at 9-12 (1992) (participation in TexFlex), 545 at 3-5 (1990) (deferred compensation plan). Likewise, the details of an employee's enrollment in a group insurance program, the designation of the beneficiary of an employee's retirement benefits, and an employee's authorization of direct deposit of the employee's salary are protected by common law privacy. *See* Open Records Decision No. 600 at 9-12. But where a transaction is funded in part by a governmental body, it involves the employee in a transaction with the governmental body, and the basic facts about that transaction are not private under section 552.101. *See id.* at 9 (basic facts of group insurance provided by governmental body not protected by common law privacy). We note, however, that the work conduct, job performance, and salary information of public employees is subject to a legitimate public interest and generally not protected under common law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (statutory predecessor applicable when information would reveal intimate details of highly personal nature), 405 at 2 (1983) (manner in which employee performed his job cannot be said to be of minimal public interest), 400 at 5 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy). After reviewing the submitted documents, we have marked the information that is protected from disclosure by the common law right to privacy under sections 552.101 and 552.102.

Next, we note that the submitted information includes W-4 forms. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code, which is also encompassed by section 552.101, renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The submitted W-4 forms, which we have marked, are tax return

information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

You also claim that the submitted information contains transcripts that are excepted from disclosure by the Family Educational Rights and Privacy Act of 1974 ("FERPA"). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Section 552.026 of the Government Code provides that "information contained in education records of an educational agency or institution" may only be released under the Act in accordance with FERPA.

We note that the city is not an educational agency or institution. However, FERPA also contains provisions governing access to information in education records transferred by an educational agency or institution to a third party. FERPA provides that an educational agency or institution may only transfer personal information to a third party "on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student." 20 U.S.C. § 1232g(b)(4)(B). Federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. 34 C.F.R. § 99.33(a)(2). Here, you state that the city received the transcripts directly from the educational institutions. Therefore, pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2), the city may only release the transcripts we have marked upon consent of the named employees.

The submitted records also include 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. 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.

The submitted records also contain a Report of Separation of License Holder (F-5) which is made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides in relevant part:

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454. The city must withhold the F-5 forms, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

The submitted records also contain information that is excepted from disclosure under section 552.117. Two of the named peace officers are no longer employed by the city. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). We note that section 552.117 also encompasses a personal cellular telephone number, provided that the cellular phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). However, an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The submitted documents reflect that the former employees at issue have properly elected to withhold their personal information. Thus, these former employees' personal information must be withheld under section 552.117(a)(1).

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 requested confidentiality under section 552.024 or 552.1175 of the Government Code.<sup>1</sup> Thus, the city must withhold the personal information of its current peace officer's, which we have marked, under section 552.117(a)(2).

We also note that the personal references in the employment application of one of the named officers may be excepted under section 552.1175 of the Government Code, which provides, in relevant 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). The personal references in the officer's application contain the home telephone numbers and home addresses of peace officers who do not work for the city. If these individuals are currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175. If the city does not receive the appropriate elections, this information must be released.

The submitted records 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. However, we note that section 552.130 does not apply to out-of-state motor vehicle record information. *Id.* In Exhibit B, we have marked a representative sample of the Texas motor vehicle record information that the city must withhold. For the remaining records, the city must withhold only the Texas motor vehicle record information we have marked.

We note that the submitted records also contain a bank account number. Section 552.136 of the Government Code 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,

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<sup>1</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, the city must withhold the bank account number we have marked.

The submitted records also contain military discharge information. Section 552.140 of the Government Code provides in relevant part:

(a) This section applies only to a military veteran’s Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

Gov’t Code § 552.140(a). Section 552.140 provides that a military veteran’s DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov’t Code § 552.140(a), (b). You do not indicate when the city first came into possession of the submitted DD-214 form. Therefore, if this form came into the city’s possession on or after September 1, 2003, we conclude that the city must withhold this information under section 552.140. Otherwise, the form must be released, subject to the markings we have made under section 552.117(a)(2).

Finally, we note that the submitted records contain the social security numbers of private citizens. 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. Therefore, the city must withhold the social security numbers of private citizens under section 552.147.<sup>2</sup>

In summary, the city must withhold the marked citations from disclosure under section 552.101 of the Government Code in conjunction with section 53.007(c) of the Family Code.

We have marked the information that is protected from disclosure by the common law right to privacy under sections 552.101 and 552.102. The submitted W-4 forms, which we have marked, are tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law. Pursuant to FERPA, the city may only release the transcripts upon consent of the named employees. The city must withhold the L-2 and L-3 declarations, which we have marked, under section 552.101 in conjunction with section 1701.306 of the Occupations Code. The city must withhold the F-5 forms, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with

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<sup>2</sup>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.

section 1701.454 of the Occupations Code. The city must withhold the personal information of its former employees and current peace officers, which we have marked, under sections 552.117(a)(1) and 552.117(a)(2), respectively. If the peace officers who do not work for the city have elected to restrict access to their personal information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175. Otherwise, this information must be released. The city must withhold the Texas motor vehicle record information under section 552.130 of the Government Code as we have indicated. The city must withhold the bank account number we have marked under section 552.136. If the city came into possession of the DD-214 form on or after September 1, 2003, the city must withhold this form under section 552.140. Otherwise, the form must be released, subject to the markings we have made under section 552.117(a)(2). The city must withhold the social security numbers of private citizens under section 552.147. 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,

A handwritten signature in black ink, appearing to read "José Vela III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 247980

Enc. Submitted documents

c: Mr. T. K. Grey  
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(w/o enclosures)