



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 24, 2006

Ms. Judith Sachitano Rawls  
Assistant City Attorney  
Police Administrative Legal Counsel  
Beaumont Police Department  
P. O. Box 3827  
Beaumont, Texas 77704

OR2006-05473

Dear Ms. Rawls:

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# 249977.

The Beaumont Police Department (the "department") received a request for information pertaining to all persons currently employed by the department and all non-City-of-Houston residents who received an appointment to the department. In addition, the request asks for copies of the applications and appointments of these appointees, and copies of each listed person's oath of office and contract. The request also asks for a list of the ethnicity, gender, and age of each listed person. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.119, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although the department has redacted some of the requested information in the submitted documents, we are able to determine in this instance whether the information falls within the scope of exceptions to the Act. In the future, the department should not redact information it submits to this office in requesting a decision under chapter 552 of the Government Code unless it has been expressly authorized to withhold such information from disclosure without requesting an attorney general decision. *See* § 552.30 (a); *see also* Open Records Decision No. 634 at 6-8 (1995).

<sup>2</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by the common law right to privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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). 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* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Government Code. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Accordingly, we will consider your section 552.101 and section 552.102 claims together. Information is protected from disclosure under the common law right to privacy if (1) it contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *See id.* 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. Information may also be withheld under section 552.101 in conjunction with common law privacy upon a showing of "special circumstances." *See Open Records Decision No. 169* (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* This office further noted that the initial determination of the existence of an imminent threat of harm should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of "special circumstances" on a case-by-case basis. *Id.* at 7.

In this instance, you inform us that all department officers are subject to working undercover at any time; thus, release of their identifying information would endanger their lives. To the extent any of the requested information pertains to officers who were acting undercover at the time of the request, these officers' identifying information must be withheld from disclosure under section 552.101 in conjunction with the "special circumstances" aspect of common law privacy. *See Open Records Decision No. 169* (1977). As you have not established the existence of "special circumstances" with respect to the remaining officers who were not working undercover at the time of the request, you may not withhold any of their identifying information on that basis.

Section 552.101 also encompasses section 411.192 of the Government Code, which governs the release of all information maintained by the Department of Public Safety ("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 documents contain information concerning an individual's concealed handgun license. In this instance, the circumstances of the request do not meet the access requirements of section 411.192. Therefore, the department must withhold this information, which it has marked, pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.

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.<sup>3</sup> See Gov't Code § 552.117(a)(2). Accordingly, we conclude that the department must withhold the information that it has marked pursuant to section 552.117(a)(2). We have marked additional information that must be withheld pursuant to section 552.117(a)(2).

Section 552.119 of the Government Code 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;

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<sup>3</sup>Section 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.

(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. 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> Furthermore, a photograph of a peace officer cannot be withheld under section 552.119 if (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; (3) the photograph is introduced as evidence in a judicial proceeding; or (4) the officer gives written consent to the disclosure. Upon review, we conclude that to the extent any of the requested information pertains to officers who were acting undercover at the time of the request, these officers' photographs must be withheld from disclosure under section 552.119. However, as you have not demonstrated how release of the photographs of the remaining officers who were not working undercover at the time of the request would endanger the lives or physical safety of these officers, you may not withhold any of their photographs on that basis.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. The department must withhold the Texas-issued driver's license and motor vehicle information it has marked under section 552.130. We have marked additional information that must be withheld pursuant to section 552.130.

We note the submitted information contains a private e-mail address. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). Therefore, in accordance with section 552.137, the department must withhold the marked e-mail address.

In summary, the department must withhold the information it has marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code and sections 552.117(a)(2) and 552.130 of the Government Code. We have marked additional information that must be withheld under sections 552.117(a)(2), 552.130, and 552.137. To the extent any of the requested information pertains to officers who were working undercover at the time of the request, these officers' identifying information and photographs must be

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

withheld from disclosure under section 552.101 in conjunction with the “special circumstances” aspect of common law privacy and section 552.119, respectively. The remaining information must be released to the requestor. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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*, 342 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 'J. Flores', with a long horizontal line extending to the right.

Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/krl

Ref: ID# 249977

Enc. Submitted documents

c: Mr. Jim Thompson  
African-American Legal Defense Group  
P. O. Box 91212  
Houston, Texas 77291-1212  
(w/o enclosures)