



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2006

Mr. Christopher Gregg
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City of Arcola, Texas
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OR2006-12563

Dear Mr. Gregg:

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# 262720.

The City of Arcola and the Arcola Police Department (collectively, the "city"), which you represent, received a request for the following information pertaining to five named police officers: applications, training certificates, F-5 Report of Separation of License Holder records, and written reprimands. The city also received a request for another named officer's training certificate for the Doppler Traffic Radar and the filed training officer manual on "patrol, policy, traffic stops and the use of the doppler radar." You inform us that the city will release the requested training certificates to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 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 deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You claim

that the submitted information is excepted from disclosure under section 143.089 of the Local Government Code. The provisions of chapter 143 of the Local Government Code only apply to civil service cities. You do not inform us that the city is a civil service city. *See id.* § 552.301(e)(1). We are therefore unable to conclude that chapter 143 is applicable in this instance. Thus, the submitted information may not be withheld on this basis.

You claim that some of the submitted information constitutes medical records, access to which is governed by the Medical Practice Act (“MPA”), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Upon review, we conclude that the information at issue does not consist of medical records subject to the MPA. Therefore, the city may not withhold any of this information under the MPA.

The submitted documents include Reports of Separation of License Holder addressed to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). This form, also known as a form “F-5,” is subject to section 1701.454 of the Occupations Code. Section 1701.452 of the Occupations Code requires a law enforcement agency to submit a report to TCLEOSE regarding an officer licensed under chapter 1701 of the Occupations Code whose appointment with the law enforcement agency is terminated. *See* Occ. Code § 1701.452. Section 1701.454 provides:

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release the contents of a report or statement submitted under this subchapter.

Id. § 1701.454. To the extent the submitted F-5 forms do not meet the criteria for disclosure provided under section 1701.454, we find that the city must withhold the forms under

section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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, 685 (Tex. 1976). Section 552.102(a) of the Government Code excepts from public 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). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee’s employment and its terms constitutes information relevant to person’s employment relationship and is part of employee’s personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (addressing statutory predecessor). We will therefore consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

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. *Indus. Found.*, 540 S.W.2d at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are protected under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have reviewed the submitted documents and marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code 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 of the Government Code or section 552.1175 of the Government Code.¹ *See* Gov’t Code § 552.117(a)(2). Accordingly,

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.

we conclude that the city must withhold the personal information we have marked pursuant to section 552.117(a)(2).

We note that the submitted documents include information which may be excepted from disclosure under section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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(a)(1), (b). Thus, to the extent the type of information we have marked relates to a currently licensed peace officer who elected to restrict access to the information in accordance with section 552.1175(b), this information must be withheld from disclosure under section 552.1175.

We note that the submitted information contains Texas driver's license and motor vehicle 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." *Id.* § 552.130. The city must withhold the information we have marked under section 552.130.

We note that the portions of the submitted information are subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Id. § 552.136. The city must withhold the insurance policy and bank account numbers we have marked pursuant to section 552.136.

We note that the submitted information also 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. Therefore, the city must withhold the social security numbers we have marked under section 552.147.²

In summary, to the extent the submitted F-5 forms do not meet the criteria for disclosure provided under section 1701.454 of the Occupations Code, we find that the city must withhold the forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the information we have marked under sections 552.117, 552.130, 552.136, and 552.147 of the Government Code. The city must withhold the type of information we have marked under section 552.1175 of the Government Code if the information relates to a currently licensed peace officer who elected to restrict access to the information in accordance with section 552.1175(b). 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.

²We 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.

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/eb

Ref: ID# 262720

Enc. Submitted documents

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