



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2007

Ms. April M. Virnig
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place Suite 200
I-30 at Bryant-Irvin Road
Fort Worth, Texas 76107-4654

OR2007-11303

Dear Ms. Virnig:

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# 286742.

The Haltom City Police Department (the "department"), which you represent, received a request for the personnel files of a named officer and the police chief and "finalized" internal affairs investigations for a specified time interval. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.115, 552.117, 552.122, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We begin with your claim that the submitted information includes an education record. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, education records that are responsive to a request for information under the Act should not

¹A copy of this letter may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

be submitted to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted for our review, among other things, a high school transcript. Because our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA, we will not address the applicability of FERPA to the transcript. Such determinations under FERPA must be made by the educational authority from which you obtained the transcript. Thus, the department should contact the educational authority from which the transcript was obtained and the DOE regarding the applicability of FERPA to the transcript.

We next note that section 552.022 of the Government Code is applicable to some of the remaining information. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). Section 552.022(a)(3) provides for required public disclosure of “information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[,]” unless the information is expressly confidential under other law. *Id.* § 552.022(a)(3). Section 552.022(a)(17) provides for required public disclosure of “information that is also contained in a public court record[,]” unless the information is expressly confidential under other law. *Id.* § 552.022(a)(17). In the instance, Exhibit A contains a completed report and completed evaluations that are subject to section 552.022(a)(1), information in a contract that is subject to section 552.022(a)(3), and information contained in a public court record that is subject to section 552.022(a)(17). Exhibit B consists entirely of completed investigations that are subject to section 552.022(a)(1). Exhibit C contains completed evaluations that are subject to section 552.022(a)(1) and information in a voucher that is subject to section 552.022(a)(3).

Although you seek to withhold the information in Exhibits A and B under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. – Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022. Therefore, the department may not withhold either the completed report and evaluations, the information in the contract, and the information in the court record in Exhibit A or the completed investigations in Exhibit B under section 552.103. Furthermore, because section 552.108 also is a discretionary exception and not other law that makes information confidential for the purposes of section 552.022(a)(3), the voucher in Exhibit C may not be withheld under section 552.108. *See* Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver). However, we will determine whether the department may withhold the remaining information in Exhibit A under

section 552.103. We also will determine whether the department may withhold the remaining information in Exhibit C under section 552.108. Additionally, we will address the other exceptions you claim.

Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App. – Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See* Open Records Decision No. 551 at 4 (1990).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.”² *Id.*

²Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission (“EEOC”), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

You state, and have provided correspondence reflecting, that an attorney for the officer to whom the remaining information in Exhibit A pertains has repeatedly threatened the City of Haltom City (the “city”) with litigation. Thus, although you do not state that the department would be a party to the litigation, we understand you to raise section 552.103 on behalf of the city. *See* Gov’t Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (addressing statutory predecessor). Based on your representations and the submitted documentation, we find that the city reasonably anticipated litigation on the date of the receipt of this request for information. You have not demonstrated, however, and it is not otherwise clear to this office that any of the remaining information in Exhibit A is related to the anticipated litigation. *See* Open Records Decision Nos. 551 at 5 (1990) (attorney general will determine whether governmental body has reasonably established that information at issue is related to litigation), 511 at 2 (1988) (information relates to litigation under section 552.103 if its release would impair governmental body’s litigation interests). We therefore conclude that the city may not withhold any of the information in Exhibit A under section 552.103 of the Government Code.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that Exhibit C consists of personnel records, which ordinarily are not protected by section 552.108. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108 not applicable to background and reference information relating to applicants for employment); Open Records Decision No. 562 at 10 (1990). In this instance, however, you explain that the personnel records at issue are those of an officer who is the subject of an ongoing criminal investigation. You inform us that a complaint has been made to the Tarrant County District Attorney’s Office and that the matter has been referred to the Texas Rangers for investigation. You state that both the district attorney’s office and the investigator who is handling the case have stated that release of the information in Exhibit C would interfere with the investigation. We note that section 552.108 may be invoked by any proper custodian of information relating to alleged criminal conduct that remains under active investigation or prosecution. *See* Open Records Decision No. 372 at 4 (1983) (applying statutory predecessor). Therefore, based on your representations, we conclude that with the exception of the voucher that is subject to section 552.022(a)(3), the department may withhold the information in Exhibit C under section 552.108(a)(1). *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.]1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Next, we address your other arguments against disclosure. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Section 6103(a) of title 26 of the United States Code makes federal tax return information confidential. The term “return information” includes “the nature, source, or amount of income” of a taxpayer. 26 U.S.C. § 6103(b)(2). We have marked W-4 forms that the department must withhold under section 552.101 in conjunction with section 6103.

You also raise section 552.101 in conjunction with section 855.115 of the Government Code. Section 855.115(a) protects “[i]nformation contained in records that are in the custody of [the Texas Municipal Retirement System[.]” Thus, because the information that you seek to withhold is held by the department or the city rather than the retirement system, we conclude that the information in question is not confidential under section 855.115 of the Government Code and may not be withheld on that basis under section 552.101.

You also contend that some of the remaining information is confidential under section 261.201 of the Family Code, which provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You contend that some of the remaining information is related to an assault involving children. We find, however, that because none of the remaining information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code, none of the information falls within the scope of section 261.201(a). *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). We therefore conclude that the department may not withhold any of the remaining information under section 552.101 in conjunction with section 261.201 of the Family Code.

You also raise section 552.101 in conjunction with section 1703.306 of the Occupations Code, which provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. We have marked information acquired from polygraph examinations that the department must withhold under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. 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."³ Gov't Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be

³We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2).

limited to the purpose for which it was given.”) and (c)(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.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We have marked CHRI that the department must withhold under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

You also contend that some of the remaining information is private under sections 552.101 and 552.102 of the Government Code. Constitutional privacy under section 552.101 protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (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). Section 552.102(a) is applicable to information that relates to public officials and employees. The test of privacy under section 552.102(a) is the same as the common-law privacy test under section 552.101 and *Industrial Foundation*. *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.). Accordingly, we will address your privacy claims under section 552.101.

Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual

organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked medical and other information that is intimate or embarrassing and of no legitimate public interest. The department must withhold that information under section 552.101.

Common-law privacy also encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Thus, 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. We have marked personal financial information that must also be withheld under section 552.101 and common-law privacy, to the extent that the marked information does not involve an employee benefit or other transaction that was funded in whole or in part by the department or the city. To the extent that the marked information involves an employee benefit or other transaction that was funded in whole or in part by the department or the city, the information is not protected by common-law privacy and may not be withheld on that basis under section 552.101.

Turning to the other exceptions you claim, section 552.115 of the Government Code excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because the submitted birth certificate is held by the department or the city, it is not excepted from disclosure under section 552.115.

Section 552.117(a)(2) of the Government Code exempts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.⁴ You state that the department has redacted some of the submitted information under section 552.117(a)(2) on the basis of the previous determination issued in Open Records Decision No. 670 (2001). We note that section 552.117(a)(2) is not applicable to a post office box number, a relative or former spouse, or the fact that a peace officer has been divorced.⁵ However, to the extent that the redacted information falls within the scope of section 552.117(a)(2), we agree that it must be withheld. We have marked other information, including cellular phone or personal pager numbers, that the department also must withhold under section 552.117(a)(2), provided that the officer purchased the cell phone or pager with his or her own funds. *See* Open Records Decision No. 670 at 6.

We note that section 552.1175 of the Government Code may be applicable to some of the remaining information.⁶ This exception is applicable to peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and provides in part:

(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.

⁴Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

⁵*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

⁶Unlike other exceptions to disclosure under the Act, this office will raise section 552.1175 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Gov't Code § 552.1175(b). We have marked information relating to peace officers who are employed by law enforcement agencies other than the department. To the extent that those officers elect to restrict access to the information in question in accordance with section 552.1175(b), the marked information must be withheld under section 552.1175.

Section 552.122 of the Government Code excepts disclosure “a test item developed by a . . . governmental body[.]” *Id.* § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated,” but does not encompass evaluations of an employee’s overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8. You contend that interview questions contained in Exhibit A are excepted from disclosure under section 552.122. We conclude, however, that the information in question does not constitute test items for purposes of section 552.122(b). We therefore conclude that the department may not withhold any of the submitted information under section 552.122 of the Government Code.

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. *See* Gov’t Code § 552.130(a)(1). We have marked Texas driver’s license information that the department must withhold under section 552.130.

Section 552.136 of the Government Code provides in part that “[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining “access device”). We have marked account and insurance policy numbers that the department must withhold under section 552.136.

Section 552.137 of the Government Code states in part that “[e]xcept 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 [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses that the department must withhold

under section 552.137 unless the owner of the e-mail address has affirmatively consented to its disclosure.

We also note that the submitted documents include a military discharge record. Section 552.140 of the Government Code provides in 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.

Id. § 552.140(a).⁷ 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 id.* § 552.140(a)-(b). You do not indicate when the department first came into possession of the DD-214 form that we have marked. Nevertheless, if this form came into the department's possession on or after September 1, 2003, then it must be withheld under section 552.140. If the DD-214 form came into the department's possession prior to September 1, 2003, then it is not excepted from disclosure under section 552.140.

Lastly, we note that some of the remaining information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990).

In summary: (1) the department should contact the educational authority from which the transcript was obtained and the DOE regarding the applicability of FERPA to the transcript; (2) with the exception of the voucher that is subject to section 552.022(a)(3) of the Government Code, the department may withhold Exhibit C under section 552.108 of the Government Code; (3) the department must withhold the marked W-4 forms under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code; (4) the marked polygraph information must be withheld under section 552.101 in conjunction with section 1703.306 of the Occupations Code; (5) the

⁷Section 552.140 also is a mandatory exception and may not be waived. Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4.

marked CHRI must be withheld under section 552.101 in conjunction with federal law and subchapter F of chapter 411 of the Government Code; (6) the marked information that is protected by common-law privacy must be withheld under section 552.101; (7) the marked personal financial information must be withheld under section 552.101 in conjunction with common-law privacy, to the extent that the marked information does not involve an employee benefit or other transaction that was funded in whole or in part by the department or the city; (8) the department must withhold the information that it has redacted under section 552.117(a)(2) of the Government Code, as well as the information that we have marked under section 552.117, to the extent that the information falls within the scope of section 552.117(a)(2); (9) the department must withhold the information that we have marked under section 552.1175 of the Government Code, to the extent that the peace officers involved elect to restrict access to the information in accordance with section 552.1175(b); (10) the marked Texas driver's license information must be withheld under section 552.130 of the Government Code; (11) the marked account and insurance policy numbers must be withheld under section 552.136 of the Government Code; (12) the marked e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owner of the e-mail address has consented to its disclosure; and (13) the marked DD-214 form must be withheld under section 552.140 of the Government Code if it came into the department's possession on or after September 1, 2003. The rest of the submitted information must be released. Information that is protected by copyright must be released in accordance with copyright law.

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 "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
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Enc: Submitted documents

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