



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 15, 2008

Ms. Meredith Ladd  
Brown & Hofmeister, LLP  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2008-09580

Dear Ms. Ladd:

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# 315602.

The Town of Flower Mound (the "town"), which you represent, received two requests for employment information pertaining to a named former police officer. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

We first note that a portion of the submitted information is not responsive to the instant request, because it does not pertain to the named officer. This decision does not address the public availability of the non-responsive information, which we have marked, and it need not be released.

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<sup>1</sup>Although you cite to section 552.108 of the Government Code, you have provided no arguments in support of withholding the submitted information under this section. Therefore, we do not address the applicability of section 552.108 to the submitted information. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

<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." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. We note that the submitted information contains ST-3 accident report forms that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release 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. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation 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. *Id.* The requestors have not provided the town with two of the three pieces of information for any of the reports; thus, the town must withhold the submitted accident reports under section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) 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. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See* Gov't Code § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find that the information we have marked constitutes CHRI subject to chapter 411. Therefore, the town must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. However, the remaining information does not consist of CHRI; thus, the town may not withhold the remaining information under section 552.101 on that basis. *Id.*

Section 552.101 also encompasses the common-law right of privacy, which protects information if it (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). 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 addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, personal financial information not relating to a financial transaction between an individual and a governmental body, some kinds of medical information or information indicating disabilities or specific illnesses, and identities of victims of sexual abuse. Upon review, we conclude that the town must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining submitted information constitutes highly intimate or embarrassing information of no legitimate concern to the public. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

The submitted information contains fingerprints. Section 552.101 also encompasses chapter 560 of the Government Code which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See Gov't Code* §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the town must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See Gov't Code* § 552.117(a)(2); Open Records Decision No. 622 (1994). In this case, the submitted information indicates that the individual at issue may no longer be employed as an officer by the Flower Mound Department. Thus, it is unclear whether this individual is a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. If the named individual remains a licensed peace officer as defined by article 2.12, the town must withhold the personal information we have marked pursuant to section 552.117(a)(2) of the Government Code.

If the named individual is no longer a peace officer, then his personal information may be excepted under section 552.117(a)(1) of the Government Code. 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 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The town may only withhold information under section 552.117(a)(1) if the named individual elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the named individual timely elected, the town must withhold the marked personal information under section 552.117(a)(1). The town may not withhold this information under section 552.117(a)(1), however, if the named individual did not make a timely election to keep his information confidential.

We note that the remaining submitted information contains 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."<sup>3</sup> *Id.* § 552.130. Accordingly, the town must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

In summary, the town must withhold the submitted accident reports under section 552.101 in conjunction with section 550.065(b) of the Transportation Code, the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law, the information we have marked under section 552.101 in conjunction with common-law privacy, and the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. If the named individual is a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the town must withhold the personal information we have marked pursuant to section 552.117(a)(2) of the Government Code. If the named individual is not a peace officer, then the town must withhold the marked personal information under section 552.117(a)(1) if the named individual timely elected confidentiality under section 552.024 of the Government Code. The town must also withhold the Texas motor vehicle record information we have marked pursuant to

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.130 of the Government Code. The remaining responsive information must be released.<sup>4</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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.

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<sup>4</sup>We note the remaining information contains social security numbers. 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.

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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 315602

Enc. Submitted documents

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