



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2008

Mr. Jonathan T. Koury
Bovey Bojorquez, L.L.P.
12325 Hymeadow Drive, Suite 2-100
Austin, Texas 78750

OR2008-10827

Dear Mr. Koury:

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# 318326.

The Nolanville Police Department (the "department"), which you represent, received a request for the personnel file and civil service records pertaining to a named former officer. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

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 protected by other statutes. The submitted information contains an F-5 Report of Separation of Licensee form, which is generally made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides, "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 instances of excessive force or violations of the law other than traffic offenses." Occ. Code § 1701.454(a). Upon review, the department must withhold the F-5 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure 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 personal financial information not relating to the financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision No. 545 (1990). However, there is a legitimate public interest in the qualifications of a public employee and how that employee performs job functions and satisfies employment conditions. See generally Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).

A compilation of an individual's criminal history is also highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review of the submitted information, we find a portion of the submitted information, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The department, however, has failed to demonstrate how the remaining information it has marked is highly intimate or embarrassing or not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) 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 one of the individuals whose information we have marked is no longer employed as an officer by the department. Thus, it is unclear whether this individual remains a licensed peace officer

as defined by article 2.12 of the Code of Criminal Procedure. If this individual remains a licensed peace officer as defined by article 2.12, the department must withhold his personal information, which we have marked, pursuant to section 552.117(a)(2) of the Government Code. If this individual is no longer a peace officer, then his personal information may not be withheld under section 552.117(a)(2). Regardless, the department must withhold the remaining personal information we have marked, which pertains to an officer who is currently employed by the department and is a licensed peace officer, under section 552.117(a)(2).

If the individual who is no longer employed by the department is not 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 department may only withhold information under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individual at issue timely elected, the department must withhold his marked personal information under section 552.117(a)(1). The department may not withhold this information under section 552.117(a)(1), however, if the individual at issue did not make a timely election to keep his information confidential.

Section 552.130 of the Government Code excepts from public 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. *See* Gov't Code § 552.130(a)(1)-(2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130.

We note the remaining information contains an e-mail address that may be subject to section 552.137 of the Government Code.¹ 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 id.* § 552.137(a)-(c). The e-mail address in the remaining information is not specifically excluded by section 552.137(c). Therefore, unless the department receives consent for its release, the e-mail address we have marked must be withheld under section 552.137. *See id.* § 552.137(b).

¹The 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).

Finally, we will address your section 552.147 claim for portions of the remaining information. Section 552.147 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. *See id.* § 552.147(b). The department may withhold the social security number it has marked under section 552.147.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code and common-law privacy. The department also must withhold the marked personal information pertaining to the officer who is currently employed with the department under section 552.117(a)(2). If the individual who is no longer employed by the department remains a license peace officer, then the department must also withhold his marked personal information under section 552.117(a)(2). If the individual who is no longer employed by the department is not a peace officer and he timely elected confidentiality, then the department must withhold his marked personal information under section 552.117(a)(1). The department must withhold the Texas motor vehicle record information we have marked under section 552.130. The department must also withhold the e-mail address we have marked under section 552.137, unless the department receives consent for its release. The department may withhold the social security number it has marked 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 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.

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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 318326

Enc. Submitted documents

c: Mr. James Kreimeyer
P.O. Box 727
Belton, Texas 76513
(w/o enclosures)