



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 20, 2008

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2008-11471

Dear Mr. Phillips:

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# 319396.

The Fort Worth Police Department (the "department") received a request for the requestor's personnel file. You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued to the City of Fort Worth in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state you are withholding social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim portions of the submitted personnel records are excepted from disclosure under sections 552.117, 552.1175, 552.122, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim portions of the submitted personnel records are protected by section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone numbers, 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 and 552.1175 of the Government Code.<sup>2</sup> Gov't Code § 552.117(a)(2). Thus, the department must withhold the personal information of the peace officers you have marked under section 552.117(a)(2) of the Government Code.

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<sup>1</sup> We note that section 552.147(b) 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.

<sup>2</sup> "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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(b). You have marked the home address and telephone number of a Tarrant County deputy constable in the remaining information. You do not inform this office, nor does any of the submitted information indicate, whether the deputy constable at issue has elected to keep this information confidential in accordance with subsections 552.1175(b)(1) and (2). Accordingly, if the deputy constable elects to restrict access to this information in accordance with section 552.1175(b), then the department must withhold the deputy constable's home address and telephone number you have marked under section 552.1175. If no election is made, the department must release the deputy constable's home address and telephone number.

You assert some of the remaining information is excepted under section 552.122, which excepts from disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 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. Open Records Decision No. 626 at 6 (1994). 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 have marked interview questions and corresponding preferred and actual answers in the remaining information that you believe are excepted under section 552.122. Upon review, we find that all of the interview questions you have marked are general questions evaluating an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Thus, none of the marked interview questions and corresponding answers qualify as test items under section 552.122(b), and therefore may not be withheld on this basis. As you raise no other

exceptions against disclosure of these questions and answers, the information you have marked must be released.

You claim some of the remaining information is confidential under section 552.130, which 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[.]” Gov’t Code § 552.130(a)(1). Therefore, the department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.<sup>3</sup>

You contend a portion of the remaining information is excepted from disclosure under section 552.136 of the Government Code. This section states that “[n]otwithstanding 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. We agree that the insurance policy number you have marked must be withheld under section 552.136.

You claim the remaining information includes e-mail addresses that are subject to section 552.137 of the Government Code, which 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 addresses you have marked in the remaining information are not specifically excluded by section 552.137(c). As such, these e-mail addresses must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

We note the remaining information contains polygraph examination results. 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, such as section 1703.306 of the Occupations Code, which provides:

(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;

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<sup>3</sup> We note that the types of information the department seeks to withhold under section 552.130 were not addressed in the previous determinations issued to the City of Fort Worth in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007).

- (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] Board 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 the information that was acquired from a polygraph examination and is within the scope of section 1703.306. We note the information pertains to a polygraph examination of the requestor. Thus, the department has the discretion to release the requestor's polygraph information we have marked pursuant to section 1703.306(a)(1) of the Occupations Code. *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, polygraph examination results to be disclosed to examinees). Otherwise, the department must withhold the marked polygraph information under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (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. Similarly, 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.

Accordingly, you must withhold the criminal history record information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

In summary, the department must withhold the home addresses and telephone numbers you have marked pursuant to section 552.117(a)(1) of the Government Code. If the deputy constable elects to restrict access to his home address and telephone number in accordance with section 552.1175(b), then the department must withhold the deputy constable's home address and telephone number you have marked under section 552.1175. If no election is made, then the department must release the deputy constable's home address and telephone number. The department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code, and the insurance policy number you have marked under section 552.136 of the Government Code. The department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the addresses have consented to their release. Pursuant to section 1703.306(a)(1) of the Occupations Code, the department has the discretion to release the requestor's polygraph examination results, which we have marked; otherwise, the information must be withheld under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code. The department must withhold the criminal history record information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The remaining 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).

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<sup>4</sup> We note that a small portion of the information being released here is the requestor's confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

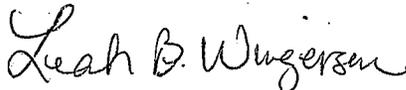
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/ma

Ref: ID# 319396

Enc. Submitted documents

c: Mr. Armando Solano  
6337 Fern Creek Lane  
Fort Worth, Texas 76179  
(w/o enclosures)