



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2008

Mr. Randall C. Stump
Stump & Stump
803 Main Street
Georgetown, Texas 78626

OR2008-16577

Dear Mr. Stump:

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# 329343.

The City of Florence (the "city"), which you represent, received a request for the city police chief's personnel file. You state the city will provide some of the requested information to the requestor. You claim some of the remaining submitted personnel records are excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have

¹ Although you also raise sections 552.102, 552.103, 552.111, and 552.122 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, none of the submitted information may be withheld under these exceptions. *See* Gov't Code §§ 552.301, .302. Furthermore, although you also claim some of the submitted information is excepted under section 552.305 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.305 requires a governmental body to notify third parties whose proprietary interests may be implicated by a request for information of the request and of the parties' right to submit comments to this office explaining why the requested information should be withheld from disclosure. *See id.* § 552.305(d).

held section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). The city must withhold the submitted W-4 forms in Exhibits 14 and 15 pursuant to section 552.101 of the Government Code in conjunction with federal law.²

You claim the submitted F-5 Report of Separation of License Holder forms in Exhibits 9 through 11 are confidential under section 1701.454 of the Occupations Code. Section 552.101 also encompasses section 1701.454, which provides in relevant part that “[a] report or statement submitted to the [Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”)] 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.” Occ. Code § 1701.454(a). In this instance, it does not appear the officer whose information is at issue resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the F-5 forms in Exhibits 9 through 11 pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.³

Section 552.101 also encompasses the doctrine of common-law privacy, which 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). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. In Open Records Decision No. 600, this office stated an employee’s beneficiary designation is a personal financial decision. Open Records Decision No. 600 (1992). Furthermore, we find this information is not of legitimate concern to the public. Therefore, the city must withhold the information we have marked in Exhibit 17 and the entirety of Exhibit 18 under section 552.101 in conjunction with common-law privacy.⁴

You claim portions of the remaining information are excepted from disclosure under section 552.117(a)(2) of the Government Code, which excepts from public disclosure a peace officer’s home address and telephone number, social security number, and family member information, regardless of whether the peace officer made an election under sections 552.024

² As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure for portions of this information.

³ As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure for portions of this information.

⁴ As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure for portions of this information.

and 552.1175 of the Government Code.⁵ Gov't Code § 552.117(a)(2). We note section 552.117(a)(2) is also applicable to a peace officer's personal cellular telephone number. *See* Open Records Decision No. 670 at 6 (2001). Based on your arguments and our review of the remaining information, we agree some of the highlighted information constitutes personal information of the peace officer at issue for purposes of section 552.117. Thus, the city must withhold the information we have marked in Exhibits 4 through 6, 8, 13, 16, 17, and 19 under section 552.117(a)(2) of the Government Code.⁶

You also seek to withhold the police chief's TCLEOSE identification number under section 552.117. You explain TCLEOSE now uses a TCLEOSE unique identification number for each officer instead of each officer's social security number. Based on this substitution, you argue an officer's TCLEOSE identification number "is now tantamount to [an officer's] personal social security number," and should be treated as such. Section 552.117, however, specifically excepts social security numbers, among other things, and does not have a provision for similar substituted information. Therefore, you have failed to demonstrate how section 552.117 applies to the marked TCLEOSE identification number, as well as the remaining information you seek to withhold under this section, and this information may not be withheld on this basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, the city must withhold the Texas driver's license information we have marked in Exhibits 8 and 13 under section 552.130 of the Government Code.

Section 552.137 of the Government Code 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 addresses we have marked in Exhibit 4 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).

In summary, the city must withhold the W-4 forms in Exhibits 14 and 15 pursuant to section 552.101 of the Government Code in conjunction with federal law; the F-5 forms in Exhibits 9 through 11 pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; the information we have marked in

⁵ "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁶ As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure for this information.

Exhibit 17 and the entirety of Exhibit 18 under section 552.101 in conjunction with common-law privacy; the information we have marked in Exhibits 4 through 6, 8, 13, 16, 17, and 19 under section 552.117(a)(2) of the Government Code; the Texas driver's license information we have marked in Exhibits 8 and 13 under section 552.130 of the Government Code; and the e-mail addresses we have marked in Exhibit 4 under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. 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).

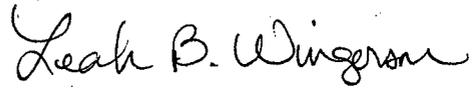
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/ma

Ref: ID# 329343

Enc: Submitted documents

cc: Requestor
(w/o enclosures)