



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2009

Mr. C. Patrick Philips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-06816

Dear Mr. Philips:

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# 346305 (FWPD #2808-09).

The Fort Worth Police Department (the "department") received a request for the personnel files of three named employees. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state that the City of Fort Worth is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary

---

<sup>1</sup>You state that you are withholding social security numbers pursuant to section 552.147 of the Government Code. See Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision from this office under the Act).

action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a).<sup>2</sup> *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the information in Exhibit C is contained in the department's internal files created pursuant to section 143.089(g). Based on your representations, we agree that Exhibit C is confidential under section 143.089(g) of the Local Government Code, and the department must withhold it pursuant to section 552.101 of the Government Code.<sup>3</sup>

Section 552.101 also encompasses federal law. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Employee W-4 forms are excepted from disclosure by section 6103(a). Open Records Decision No. 600 (1992). Accordingly, we agree that the department must withhold the W-4 tax form you have marked under section 552.101 in conjunction with section 6103(a).

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). 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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related

---

<sup>2</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

<sup>3</sup>Section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We agree that the department must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

You assert that some of the information in Exhibit D is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security number, 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. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state, and provide supporting documentation showing, that the employee at issue elected to keep these types of information confidential before the department received the request for information; therefore, we agree that the department must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(1).

Section 552.117(a)(2) of the Government Code excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). You inform us that information has been redacted in accordance with Open Records Decision No. 670 (2001), which is a previous determination by this office authorizing a governmental body to redact these types of information pursuant to section 552.117(a)(2) without the necessity of requesting a decision under section 552.301 of the Government Code. *See* ORD 670 at 6 (home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers may be withheld without necessity of requesting attorney general decision under section 552.117). We note, however, that some of the information you have redacted pursuant to Open Records Decision No. 670 does not consist of a home address or telephone number, social security number, or family member information of a peace officer; therefore, the department may not withhold this information, which we have marked for release, under section 552.117(a)(2). We have marked information that must also be withheld under section 552.117(a)(2).

You state you have redacted Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous determinations issued 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). We note Exhibit D contains a Texas driver's license that you have not redacted. Section 552.130 provides that 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 department must withhold the Texas driver's license we have marked in Exhibit D under section 552.130.

Finally, you assert that some of the remaining information is excepted under section 552.137 of the Government Code. 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 Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. Therefore, we agree that the department must withhold the e-mail addresses you have marked under section 552.137.

To conclude, the department must withhold the following: Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code; the W-4 form marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code; the submitted information marked under section 552.117 of the Government Code; the submitted information we have marked under section 552.130 of the Government Code; and the e-mail addresses marked under 552.137 of the Government Code. The remaining submitted information, including the information we have marked for release, must be provided to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cc

Ref: ID# 346305

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)