



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2009

Mr. Christopher Gregg
City Attorney
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2009-08523

Dear Mr. Gregg:

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# 346618 (PIR 09-130).

The City of League City (the "city"), which you represent, received a request for all information pertaining to a named officer from January 1, 1997 through April 1, 2009, including fourteen specific categories of information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note some of the submitted information was created after the city's receipt of the request for information. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Thus, the information we marked is not responsive to the request and this decision does not address it.

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 section 143.089 of the Local Government Code. The city is a civil service city under chapter 143 of the Local Government Code.

Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary 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 in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).¹ Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *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. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied). You state Exhibit A is subject to section 143.089(g) of the Local Government Code. Based on your representations and our review, we agree Exhibit A is confidential under section 143.089(g) and must be withheld under section 552.101 of the Government Code.

Next, we note Exhibit B contains L-2 (Declaration of Medical Condition) forms, which are required by the Texas Commission on Law Enforcement Officer Standards and Education (the "commission"). These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides in relevant part as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

...

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Loc. Gov't Code §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). *Id.*

Occ. Code § 1701.306(a), (b). Thus, the city must withhold these forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Next, we note Exhibit B contains information acquired from a polygraph examination. Section 552.101 of the Government Code encompasses section 1703.306(a) of the Occupations Code, which provides “[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[.]” *Id.* § 1703.306(a). It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, we conclude the city must withhold the information acquired from a polygraph examination, which we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Next, we note some of the information in Exhibit B is subject to common-law privacy. Section 552.101 of the Government Code 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.2d688, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See id.* at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure); *see also* Open Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common law privacy), 523 (1989). Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, the remaining information in Exhibit B contains information subject to section 552.117 of the Government Code. Section 552.117(a)(2) 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 section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly,

the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

We note a portion of the remaining information in Exhibit B may be excepted from disclosure under section 552.1175 of the Government Code.² Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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.

Id. § 552.1175(a)(1), (b). We have marked information in Exhibit B that may be subject to section 552.1175. To the extent this information pertains to currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), the city must withhold it under section 552.1175(b).

Next, we note the remaining information in Exhibit B contains information subject to section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle driver's license or a Texas motor vehicle title or registration. *Id.* § 552.130(a)(1), (2). The city must withhold the Texas driver's license information and Texas motor vehicle record information we have marked in Exhibit B under section 552.130 of the Government Code.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Next, we note the remaining information in Exhibit B contains an e-mail address 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). *Id.* § 552.137(a)-(c). The e-mail address in the remaining information is not specifically excluded by section 552.137(c). The city must withhold the e-mail address, which we have marked, under section 552.137, unless the owner of the address has affirmatively consented to its release.

Finally, we note the remaining information in Exhibit B contains a credit card account number excepted from disclosure under section 552.136 of the Government Code. Section 552.136 states “[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(b). Accordingly, the city must withhold this credit card account number, which we have marked, under section 552.136 of the Government Code.

In summary, the city must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. From Exhibit B, the city must withhold (1) the L-2 forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, (2) the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code, (3) the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (4) the information we have marked under section 552.117(a)(2) of the Government Code, (5) the information we have marked under section 552.1175 of the Government Code, to the extent it pertains to currently licensed peace officers who elect to restrict access to it in accordance with section 552.1175(b), (6) the information we have marked under section 552.130 of the Government Code, (7) the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release, and (8) the account number we have marked under section 552.136 of the Government Code. The remaining information must be released.³

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.

³We 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.

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, 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,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/cc

Ref: ID# 346618

Enc. Submitted documents

c: Requestor
(w/o enclosures)