



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Mr. Charles E. Zech
Denton, Navarro, Rocha & Bernal
Attorney for Copperas Cove
2517 North Main Avenue
San Antonio, Texas 78212

OR2009-12237

Dear Mr. Zech:

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# 354161.

The City of Copperas Cove (the "city"), which you represent, received a request for several categories of information regarding a named former officer of the city's police department. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains an F-5 form (Report of Separation of License Holder). 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 exception encompasses information that other statutes make confidential. Section 1701.454 of the Occupations Code provides in relevant part that "[a] report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code." Occ. Code § 1701.454(a). The city must therefore withhold the F-5 form we have marked

¹Although you raise section 552.1175 of the Government Code, section 552.117 is the proper exception for information that the city holds in its capacity as an employer.

pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.²

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type 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 also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision Nos. 545 (1990). Upon review, we have marked the personal financial information that is both highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold this personal financial information under section 552.101 of the Government Code in conjunction with common-law privacy.³

You also seek to withhold under common-law privacy portions of the remaining information that pertain to the named former officer's criminal history. A compilation of an individual's criminal history is 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). Moreover, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, this office has also found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). In this instance, the information you seek to withhold pertains to a former police officer, not a private citizen. Because the officer's compiled criminal history information appears to have been gathered in the course of his pre-employment screening, there is a legitimate public interest in this information. Accordingly,

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

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the doctrine of common-law privacy is not applicable in this instance, and none of the remaining information may be withheld on this basis.

Section 552.117(a)(2) of the Government Code 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). We note section 552.117(a)(2) encompasses a peace officer's personal cellular telephone and pager numbers if the officer personally pays for the cellular or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1998) (Gov't Code § 552.117 not applicable to cellular mobile telephone numbers paid for by governmental body and intended for official use). In this instance, the requested information concerns an officer who is no longer employed by the city's police department. Nevertheless, if the former officer is still a peace officer as defined by article 2.12, then the city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.

If the former officer is no longer a peace officer, then the city may be required to withhold his personal information under section 552.117(a)(1). Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, the city must withhold the information we have marked under section 552.117(a)(1) to the extent that the former officer timely requested confidentiality for that information under section 552.024.⁴

Section 552.130 of the Government Code 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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130, the city must withhold the Texas motor vehicle record information we have marked.

⁴Regardless of the applicability of section 552.117, 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.

In summary, the city 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. The city must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the personal information of the former officer, which we have marked, under section 552.117(a)(2) of the Government Code if he is still a peace officer as defined by article 2.12 of the Code of Criminal Procedure. If the former officer is not a peace officer and he timely elected confidentiality, then the city must withhold his marked personal information under section 552.117(a)(1) of the Government Code. The city must withhold the information we have marked pursuant to section 552.130 of the Government Code. The remaining information must be released 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, 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 354161

Enc. Submitted documents

cc: Requestor
(w/o enclosures)