



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2009

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2009-15008

Dear Ms. Camp-Lee:

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# 359084.

The City of Round Rock (the "city"), which you represent, received a request for all information pertaining to a specified investigation. You state you have released some information to the requestor. We note you have redacted social security numbers from the submitted information pursuant to section 552.147 of the Government Code.¹ You assert some of the submitted information is not subject to the Act. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your assertion that some of the submitted information is not subject to disclosure under the Act. The judiciary is expressly excluded from the requirements of the Act. *See* Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary and therefore not subject to the Act. *See* Open Records Decision No. 411 (1984). Further, records kept by another person or entity acting as an agent for a grand jury are considered to be records in the constructive possession of the

¹Section 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.

grand jury and therefore are not subject to the Act. *See* Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* ORD 513 at 4 (defining limits of judiciary exclusion). The fact that information collected or prepared by another person or entity is submitted to the grand jury does not necessarily mean that such information is in the grand jury's constructive possession when the same information is also held in the other person's or entity's own capacity. Information held by another person or entity but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions to disclosure, but such information is not excluded from the reach of the Act by the judiciary exclusion. *See* ORD 513. You inform us that the information in Exhibit D was obtained pursuant to grand jury subpoenas and is held by the city as an agent of the grand jury. Accordingly, Exhibit D is in the grand jury's constructive possession and is not subject to the Act. This decision does not address the public availability of this information, which need not be released to the requestor.

Next, we address your arguments against the disclosure of the remaining 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 made confidential by other statutes, such as section 1701.306 of the Occupations Code. Under section 1701.306, L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") are confidential. Section 1701.306 provides:

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

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(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.

Occ. Code § 1701.306(a), (b). Upon review, we agree the city must withhold the L-3 form in Exhibit C-2 under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to TCLEOSE. Section 1701.454 provides as follows:

(a) A report or statement submitted to [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.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Id. § 1701.454. In this instance, it does not appear that the officer at issue resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, we conclude the city must withhold the F-5 form in Exhibit C-3 pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306(a) provides that “[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). Upon review, we agree that Exhibit C-5 consists of polygraph information that is confidential under section 1703.306. We also agree that the requestor does not appear to have a right of access to the information under that section; therefore, the city must withhold Exhibit C-5 under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. Open Records Decision No. 565 (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 in accordance with 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 only release CHRI 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 the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Furthermore, 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. Thus, the city must withhold the CHRI in Exhibit C-4 under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. *See id.* § 411.083(b)(3).

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 agree that the personal financial information in Exhibit C-1 is both highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold Exhibit C-1 under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you assert the information you have highlighted in yellow in Exhibit B is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 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. Upon review, we agree the city must withhold the Texas motor vehicle record information you have highlighted in yellow under section 552.130 of the Government Code.

You raise section 552.136 of the Government Code for a portion of the remaining information in Exhibit B. Section 552.136 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(b). Upon review, we agree the city must withhold the insurance policy number you have highlighted in green under section 552.136 of the Government Code.

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The e-mail addresses you have highlighted in pink are not specifically excluded by section 552.137, and you inform us that the owners of the addresses have not consented to their release. Accordingly, the city must withhold the e-mail address you have highlighted in pink under section 552.137 of the Government Code.

Next, we note some of the remaining information may be excepted from disclosure under section 552.1175 of the Government Code.² Section 552.1175 of the Government Code 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). Provided that the individual in question is a peace officer who elects to restrict access to his personal information in accordance with section 552.1175, the city must withhold the information we have marked under section 552.1175 of the Government Code.³ *See, e.g.,* Open Records Decision No. 678 (2003).

In summary, Exhibit D, which the city holds as an agent of the grand jury, is not subject to disclosure under the Act and need not be released to the requestor. The city must withhold the following information under section 552.101 of the Government Code: (1) Exhibit C-2 in conjunction with section 1701.306 of the Occupations Code; (2) Exhibit C-3 in conjunction with section 1701.454 of the Occupations Code; (3) Exhibit C-5 in conjunction

²This office will raise a mandatory exception such as section 552.1175 on behalf of a governmental body, as the Act makes the release of confidential information a criminal offense. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 325 (1982).

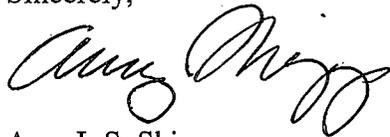
³*See* Gov’t Code § 552.1175(f) (governmental body may redact personal information of peace officer without necessity of requesting decision from this office).

with section 1703.306 of the Occupations Code; (4) Exhibit C-4 in conjunction with chapter 411 of the Government Code; and (5) Exhibit C-1 in conjunction with common-law privacy. The city must withhold the information you have highlighted in yellow in Exhibit B under section 552.130 of the Government Code. The city must withhold the green-highlighted and pink-highlighted information in Exhibit B pursuant to sections 552.136 and 552.137 of the Government Code, respectively. The city must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a peace officer who elects to restrict access to his personal information in accordance with section 552.1175. 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, toll free, at (888) 672-6787.

Sincerely,



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

ALS/rl

Ref: ID# 359084

Enc. Submitted documents

cc: Requestor
(w/o enclosures)