



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2010

Mr. Marc J. Schnall  
Langley & Banack, Inc.  
Attorneys for City of Selma  
745 East Mulberry, Suite 900  
San Antonio, Texas 78121-3166

OR2010-06070

Dear Mr. Schnall:

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# 378080.

The Selma Police Department (the "department"), which you represent, received a request for disciplinary records, complaints, and personnel records relating to a named police officer. You state you will release some information to the requestor. You indicate you will redact social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has agreed to the redaction of "information such as the officer's home address, social security number, telephone number, [and] personal family member information of the officer listed in accordance with § 552.117 and § 552.1175" and "photographs in accordance with § 552.119." Therefore, any of this information within the submitted documents is not responsive to the present request for information. You have marked some personal information of the officer under section 552.117, and we have marked

---

<sup>1</sup> Section 552.147(b) 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. Gov't Code § 552.147(b).

additional information as non-responsive. Our ruling does not address this non-responsive information, and the department need not release such information in response to this request.

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 chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states 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 DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. We note an individual's current involvement in the criminal justice system, including active warrant information, does not constitute criminal history record information. In addition, information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). Upon review, we find a portion of the information in Exhibit B constitutes CHRI generated by the National Crime Information Center or the Texas Crime Information Center. Accordingly, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 411.083 of the Government Code. However, none of the remaining information is confidential under section 411.083, and the department may not withhold it on this basis.

Section 552.101 also encompasses section 143.089 of the Local Government Code. This section 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). You do not inform us the City of Selma is a civil service city as defined by chapter 143. However, you claim some of the information in Exhibit E is confidential under section 143.089 of the Local Government Code, as this information relates to the named police officer's employment with a civil service city. However, we note section 143.089 only applies to records held by the civil service city. As the information at issue in this instance is held by the department, which is not subject to chapter 143, section 143.089 is not applicable and the information may not be withheld on that basis.

Section 552.101 also encompasses section 1703.306 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 other than those authorized by this section. Occ. Code § 1703.306(a). You have marked information in Exhibit E that we agree consists of confidential polygraph information. The requestor does not appear to fall into any of the categories of individuals authorized to receive the polygraph information under section 1703.306(a); therefore, the department must withhold the polygraph information you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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* include 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. In addition, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, this office has stated that there is a legitimate public interest in the qualifications of persons who seek public employment, as well as the hiring practices of governmental entities. See generally Open Records Decisions Nos. 542 at 5 (1990) (information regarding the qualifications of a public employee is of legitimate concern to the public); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 455 at 9 (1987) (public has a legitimate interest in knowing applicants' past employment record and their suitability for the employment position in question). Upon review, we find the information we have marked in Exhibit B is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code pursuant to common-law privacy. However, the remaining information you have marked is not intimate or embarrassing or is of legitimate public interest. Thus, the department may not withhold any of the remaining information under common-law privacy.

We note some of the remaining information may fall under section 552.1175 of the Government Code.<sup>2</sup> Section 552.1175 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.

*Id.* § 552.1175(b). The remaining information may include addresses and home telephone numbers of peace officers who are not department employees. Thus we must rule conditionally on this information, which we have marked. To the extent these individuals are currently licensed peace officers who elect with the department to restrict public access to their personal information, the department must withhold their addresses and home telephone numbers under section 552.1175. To the extent these individuals are not currently licensed peace officers who elect with the city to restrict public access to their personal information, the department may not withhold the information pertaining to these individuals under section 552.1175.

Section 552.130 of the Government Code section 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(a)(1)-(2). We agree the department must withhold the Texas motor vehicle record information you have marked, as well as the additional Texas motor vehicle record information we have marked, in Exhibit B under section 552.130.

Section 552.136 of the Government Code 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of

---

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

section 552.136. Accordingly, the department must withhold the insurance policy number you have marked in Exhibit B under section 552.136 of the Government Code.<sup>3</sup>

You state portions of the remaining information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083. The department must withhold the polygraph information you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold their addresses and home telephone numbers of the individuals we have marked under section 552.1175 to the extent these individuals are currently licensed peace officers who elect with the department to restrict public access to their personal information. The department must withhold the Texas motor vehicle record information you have marked, along with the additional information we have marked, under section 552.130 of the Government Code. The department must withhold the insurance policy number you have marked under section 552.136 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.

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,

---

<sup>3</sup> We note, and you acknowledge, this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code and an insurance policy number under section 552.136 of the Government Code without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 378080

Enc. Submitted documents

c: Requestor  
(w/o enclosures)