



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2013

Mr. Charles H. Weir
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2013-15362

Dear Mr. Weir:

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# 498346 (COSA File No. W016263).

The City of San Antonio (the "city") received a request for information pertaining to a specified case, specified audio and video recordings, the personnel information of two named officers, information pertaining to specified 9-1-1 calls, and a copy of the city police department's general manual. You state you have released the general manual to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibit 5 relates to a pending criminal investigation. Based upon this representation and our review, we conclude section 552.108(a)(1) is applicable to this information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers

to the basic “front-page” information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes an arrestee’s name, race, sex, age, occupation, address, physical condition, and social security number and a detailed description of the offense. See ORD 127. Accordingly, with the exception of the basic information, which must be released, the city may withhold Exhibit 5 under section 552.108(a)(1).

We note some of the basic information in Exhibit 5 contains information subject to section 552.1175 of the Government Code, which protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹ See Act of May 26, 2013, 83rd Leg., R.S., H.B. 1632, § 3 (to be codified as an amendment to Gov’t Code § 552.1175). Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” Gov’t Code § 552.1175(a)(1). In releasing basic information, the city must withhold the information we have marked under section 552.1175 of the Government Code to the extent the peace officer whose information is at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. If no election is made, the city may not withhold information we have marked under section 552.1175 of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 143.089 of the Local Government Code.² Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including 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). The officer’s civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer’s supervisor, and documents relating to any misconduct in any instance in which the police department took disciplinary action against the officer under chapter 143 of the Local Government Code. See *id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See *id.* § 143.051 *et seq.* 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, including

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²You state the city is a civil service municipality under chapter 143 of the Local Government Code.

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). *See Abbott v. 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 are in the 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 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). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See Local Gov't Code* § 143.089(b)-(c).

Subsection(g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to the file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made the records confidential. *See id.* at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to “information reasonably related to a police officer's or fire fighter's employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the information in Exhibits 3 and 4 is taken from the city's police department personnel files, which are maintained in the city police department's internal files pursuant to section 143.089(g). Based on your representations and our review, we agree the city must withhold most of the information in Exhibits 3 and 4 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

We note, however, an officer's civil service file must contain commendations, documents relating to any misconduct in those cases where the police department took disciplinary action against the officer, and periodic evaluations. See Local Gov't Code § 143.089(a)(1)-(3). Some of the information in Exhibit 3 and 4 reflects it relates to conduct that resulted in suspension. See Local Gov't Code §§ 143.051-.052 (suspension is "disciplinary action" for purposes of section 143.089(a)(2)). Therefore, we find this information, which we have marked, resulted in disciplinary action against the named officers. In addition, Exhibits 3 and 4 contain commendations and periodic evaluations. In this instance, the request was received by the city, which has access to the files maintained under subsections 143.089(a) and 143.089(g); therefore, the request encompasses both of these files. Because the information we have marked consists of commendations or evaluations, or relates to misconduct that resulted in disciplinary action against the officer at issue, this information must be maintained in the civil service file pursuant to subsections 143.089(a)(1), 143.089(a)(2), and 143.089(a)(3), and it may not be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code § 560.003; see *id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released). We have marked fingerprints in the remaining information. You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information in this instance. Therefore, the city must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court

in *Industrial Foundation*. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information in Exhibits 3 and 4 is subject to sections 552.102, 552.117, 552.1175, 552.130, 552.136, and 552.137 of the Government Code. Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we find the date of birth we have marked must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, 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. *See* Gov’t Code § 552.117(a)(1). 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 official or 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. Accordingly, if the city employee whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city may not withhold the information at issue under section 552.117 if the individual did not make a timely election to keep her information confidential.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* 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 and indicated under section 552.117(a)(2) of the Government Code.³

³We note a governmental body may withhold a peace officer’s home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁴

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the account numbers we have marked under section 552.136 of the Government Code.⁵

Section 552.137 of the Government Code 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). The information at issue is not within the scope of section 552.137(c). Therefore, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consents to their public disclosure.⁶

In summary, with the exception of basic information, which must be released, the city may withhold Exhibit 5 under section 552.108(a)(1) of the Government Code. In releasing basic information, the city must withhold the information we have marked under section 552.1175 of the Government Code to the extent the peace officer whose information is at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. Except for the information that must be maintained in the civil service file pursuant to subsections 143.089(a)(1), (2), and (3), the city must withhold the information in Exhibits 3 and 4 under section 552.101 of the Government Code in

⁴We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

⁵We note section 552.136(c) of the Government Code authorizes a governmental body to redact access device numbers subject to section 552.136(b) without requesting a decision. *See* Gov't Code § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor).

⁶We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

conjunction with section 143.089(g) of the Local Government Code. The city must withhold the information we have marked and indicated in Exhibits 3 and 4 under the following: (1) section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) section 552.101 of the Government Code in conjunction with common-law privacy; (3) section 552.102(a) of the Government Code; (4) section 552.117(a)(1) of the Government Code, if the city employee whose information we have marked timely requested confidentiality under section 552.024 of the Government Code; (5) section 552.117(a)(2) of the Government Code; (6) section 552.130 of the Government Code; (7) section 552.136 of the Government Code; and (8) section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city must release the remaining information.⁷

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 498346

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁷We note the information being released 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. See Gov't Code § 552.147(b).