



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2013

Ms. Evelyn W. Njuguna
Staff Attorney
Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2013-19511

Dear Ms. Njuguna:

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# 505134 (ORU No. 13-4916).

The Houston Police Department (the "department") received a request for all files on the requestor, including specified polygraph charts. You state the department will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note, and you acknowledge, the department did not comply with section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). We note the department also failed to comply with its fifteen-day deadline under section 552.301(e). *See id.* 552.301(e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). This statutory presumption can generally be overcome when information is confidential by law or

third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the 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 protected by other statutes, such as section 1703.306 of the Occupations Code. Section 1703.306 provides the following, in pertinent part:

(a) 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:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a)(1). We agree some of the submitted information constitutes information acquired from a polygraph examination. However, in this instance, the requestor is the polygraph examinee. Thus, the department has the discretion to release the requestor’s polygraph information, which we have marked, pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, examination results to be disclosed to examinees). Otherwise, the department must withhold the polygraph information we have marked under section 552.101 in conjunction with section 1703.306(a) of the Occupations Code. We find, however, you have failed to demonstrate any of the remaining information was acquired from a polygraph examination. As such, none of the remaining information may be withheld under section 552.101 in conjunction with section 1703.306(a).

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for

criminal justice purposes. *See id.* § 411.089(b)(1). We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement in the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes confidential CHRI. This information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

We note the remaining information contains information subject to section 552.117(a)(2) of the Government Code, which exempts 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.¹ *See id.* § 552.117(a)(2). Section 552.117 also protects a peace officer's personal cellular telephone number if a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) exempts from disclosure peace officer's cellular telephone or pager number if officer pays for cellular telephone or pager service). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the telephone numbers we have marked under section 552.117(a)(2) of the Government Code. However, any marked cellular telephone numbers may be withheld under section 552.117(a)(2) only if a governmental body does not pay for the cellular telephone service. If the telephone numbers are cellular telephone numbers and the telephone service is paid for by a governmental body, the marked telephone numbers may not be withheld under section 552.117(a)(2).

Some of the remaining information may be subject to section 552.1175 of the Government Code. 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, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual

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 No. 481 (1987), 480 (1987), 470 (1987).

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(a)(1), (b). The remaining information indicates the telephone number we have marked relates to a peace officer who is employed by another law enforcement agency. Section 552.1175(b) also applies to the personal cellular telephone number of an individual who falls within the scope of section 552.1175(a), provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, to the extent the marked information pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b), the department must withhold the marked telephone number under section 552.1175 of the Government Code. However, if the marked telephone number is a cellular telephone number, the department must withhold it under section 552.1175 only if a governmental body does not pay for the cellular telephone service. Conversely, if the officer at issue does not elect to restrict access to his information in accordance with section 552.1175(b) or the telephone number is a cellular telephone number and the telephone service is paid for by a governmental body, the marked telephone number may not be withheld under section 552.1175.

In summary, the department has the discretion to release the requestor's polygraph information, which we have marked, pursuant to section 1703.306(a)(1) of the Occupations Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the telephone numbers we have marked under section 552.117(a)(2) of the Government Code; however, any marked cellular telephone numbers may be withheld under section 552.117(a)(2) only if a governmental body does not pay for the cellular telephone service. The department must withhold the marked telephone number under section 552.1175 of the Government Code, to the extent the marked information pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b); however, if the marked telephone number is a cellular telephone number, the department must withhold it under section 552.1175 only if

a governmental body does not pay for the cellular telephone service. The department must release the remaining information.²

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 505134

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that because the requestor has a right of access to certain information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.