



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2013

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-21157

Dear Ms. Kretz:

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# 506111 (PIR No. W027910).

The City of Fort Worth (the "city") received a request for information pertaining to two named city police officers.¹ You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.115, 552.117, 552.130, 552.136, 552.137, 552.140,

¹You state the city sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

and 552.147 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

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 section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as a taxpayer’s “identity, the nature, source, or amount of his income[.]” See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the information we have marked constitutes tax return information. The city must withhold this information under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.⁴

Section 552.101 of the Government Code also encompasses chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation (the “department”) or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.⁵ The submitted information contains a CR-3 Texas

²We understand you to raise sections 552.115 and 552.140 of the Government Code based on your markings.

³We assume the “representative sample” of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

⁴As you acknowledge, Open Records Decision No. 684 (2009) is a previous determination issued to all governmental bodies authorizing them to withhold specified categories of information, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, without requesting a decision from this office.

⁵See Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

Peace Officer's Crash Report. In this instance, the requestor has not provided the city with two of the three pieces of required information pursuant to section 550.065(c)(4). Accordingly, the city must withhold the submitted CR-3 report you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

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. 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." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 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 not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, 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. Upon review, we find the information we have marked constitutes confidential CHRI, which the city must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. However, we find none of the remaining information you have marked constitutes confidential CHRI for the purposes of chapter 411. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code. The submitted information contains 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"). These forms are confidential under section 1701.306, which provides the following:

- (a) [TCLEOSE] may not issue a license to a person 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 blood test or other medical test.

(b) An agency hiring a person for whom a license 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 [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Therefore, the city must withhold the submitted L-2 and L-3 declaration forms, which you have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.⁶

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(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;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

⁶As you acknowledge, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specified categories of information, including L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306(b) of the Occupations Code, without the necessity of requesting an attorney general decision.

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Id. § 1703.306. Upon review, we find some of the remaining information, which we have marked, consists of information acquired from a polygraph examination subject to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code. However, we find no portion of the remaining information you seek to withhold consists of information acquired from a polygraph examination. Accordingly, the city may not withhold any of the remaining information at issue under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and 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). This office has also determined a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987), 444 at 5-6 (1986), 432 at 2 (1984).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁷ The city has failed to demonstrate, however, how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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."⁸ Gov't Code § 552.102(a). The Texas Supreme Court has 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). Upon review, the city must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

Next, we understand you to assert the submitted birth certificate is excepted from disclosure under section 552.115 of the Government Code. Section 552.115 excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because it is maintained by the city, the submitted birth certificate may not be withheld under section 552.115 of the Government Code.

⁷As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁸The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) also encompasses a peace officer's cellular telephone or pager number, unless the cellular telephone or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). We also note a post office box number is not a "home address" for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). The information at issue consists of the personal information and cellular telephone number of individuals currently or formerly employed by the city's police department. In this instance, however, it is unclear whether the individuals at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, if the individuals at issue are currently licensed peace officers as defined by article 2.12, with the exception of the information we have marked for release, the city must withhold the information you have marked and the additional information we have marked under section 552.117(a)(2) of the Government Code; however, the city must withhold the marked cellular telephone number only if a governmental body did not pay for the service. If the individuals at issue are no longer licensed peace officers as defined by article 2.12, the city may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

If the individuals whose information is at issue are currently not licensed peace officers, then the personal information we have marked and indicated may be subject to section 552.117(a)(1) 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Section 552.117(a)(1) also encompasses a personal cellular telephone or pager number, unless the cellular telephone or pager service is paid for by a governmental body. *See* ORD 506 at 5-7. If the individuals at issue timely elected to keep such information confidential under section 552.024, with the exception of the information we have marked for release, the city must withhold the information you have marked and the additional

information we have marked under section 552.117(a)(1) of the Government Code; however, the city must withhold the marked cellular telephone number only if a governmental body did not pay for the service.⁹ If the individuals at issue did not make a timely election under section 552.024, the city may not withhold the information at issue under section 552.117(a)(1) of the Government Code.¹⁰

We note some of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 applies to information the city does not hold in an employment context that concerns the following individuals:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
- (5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
- (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b);
- (7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;
- (8) police officers and inspectors of the United States Federal Protective Service; and

⁹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

¹⁰We note, regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact a living persons social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

(9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement.

Gov't Code § 552.1175(a). If the information at issue concerns an individual listed in section 552.1175(a), then section 552.1175(b) protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of that individual, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See id.* § 552.1175(b). We have marked information the city must withhold under section 552.1175 of the Government Code if the individuals to whom the information pertains are individuals described by subsection 552.1175(a), the information falls within the scope of subsection 552.1175(b), and the individuals elect to restrict access to their information in accordance with subsection 552.1175(b). If the individuals whose information is at issue are not individuals described by subsection 552.1175(a), the information does not fall within the scope of subsection 552.1175(b), or no election is made, the city may not withhold the information we have marked under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1)-(2). Upon review, we find the city must withhold the information you have marked, in addition to information we have marked, under section 552.130 of the Government Code.¹¹

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). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the insurance policy numbers you have marked under section 552.136 of the Government Code.¹²

¹¹We 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 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 id.* § 552.130(d), (e).

¹²Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

Section 552.137 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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, with the exception of the information we have marked for release, the city must withhold the personal e-mail addresses you have marked and the additional information we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may be disclosed only in accordance with section 552.140 or a court order. *See id.* § 552.140(a)-(b). We note that section 552.140 applies to only the DD-214 form itself or other military discharge records and not references to the form or records. Upon review, we find the city came into possession of the DD-214 forms and other military discharge records we have marked after September 1, 2003. Thus, the city must withhold the DD-214 forms and other military discharge records we have marked under section 552.140 of the Government Code.

In summary, the city must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (2) the submitted CR-3 report you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (3) the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (4) the submitted L-2 and L-3 declaration forms you have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (5) the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (6) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (7) the dates of birth we have marked under section 552.102(a) of the Government Code; (8) the information you have marked, with the exception of the information we have marked for release, and the additional information we have marked under section 552.117(a)(2) of the Government Code if the individuals at issue are currently licensed peace officers as defined by article 2.12 and a governmental body does not pay for the cellular telephone service; (9) the information you have marked, with the exception of the information we have marked for release, and the additional information we have marked under section 552.117(a)(1) of the Government Code if the individuals at issue timely elected confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service; (10) the information we have marked under section 552.1175 of the Government Code, if the individuals to whom the information pertains are individuals described by subsection 552.1175(a) of the Government Code, the

information falls within the scope of subsection 552.1175(b) of the Government Code, and the individuals elect to restrict access to their information in accordance with subsection 552.1175(b) of the Government Code; (11) the information marked under section 552.130 of the Government Code; (12) the insurance policy numbers you have marked under section 552.136 of the Government Code; (13) the personal e-mail addresses you have marked, with the exception of the information we have marked for release, and the additional information we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; and (14) the DD-214 forms and other military discharge records we have marked under section 552.140 of the Government Code. The city must release the remaining information.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 506111

Enc. Submitted documents

c: Requestor
(w/o enclosures)