



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2014

Ms. Teresa J. Brown  
Senior Open Records Assistant  
Plano Police Department  
P.O. Box 860358  
Plano, Texas 75086-0358

OR2014-03675

Dear Ms. Brown:

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# 515389 (Plano PD #RUSF112713).

The Plano Police Department (the "department") received a request for all records regarding a named individual's application for employment with the department. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.1175 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes an officer's Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") identification number. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection

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<sup>1</sup>Although you raise section 552.117 of the Government Code, we note section 552.1175 of the Government Code is the proper exception to raise in this instance because the department does not hold the information at issue in an employment capacity.

of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the officer's TCLEOSE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the TCLEOSE website. Thus, we find the TCLEOSE number we have marked does not constitute public information under section 552.002 of the Government Code. Therefore, the TCLEOSE number we have marked is not subject to the Act and need not be released to the requestor.

Section 552.108(a)(1) of the Government Code 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(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 generally is not applicable to purely administrative records that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002,, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 562 at 10 (1990). You state the release of some of the remaining background information could negatively impact the applicant's ability to successfully investigate and prosecute crime. However, you do not explain the remaining information pertains to an ongoing criminal investigation. Thus, we find you have failed to demonstrate how release of the remaining information would interfere with the detection, investigation, or prosecution of crime. Therefore, the department may not withhold any of the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See e.g.* Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations

on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the release of some of the remaining information would reveal the department's strategies used to determine a candidate for employment's suitability and competency for employment and would hinder the department's background investigator's ability to gather information on candidates for employment. You explain release of the information at issue would interfere with the department's ability to scrutinize an applicant to determine suitability and competency for a position. Upon review, we find you have failed to demonstrate how the release of the information would interfere with law enforcement or prosecution efforts. Accordingly, the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

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 1703.306 of the Occupations Code. Section 1703.306 provides, in relevant 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[.]

(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.

Occ. Code § 1703.306(a), (b). The remaining information contains information acquired from a polygraph examination. However, in this instance, the requestor may be the examinee's spouse, and thus, the examinee's authorized representative. Because we are unable to determine whether the requestor is the authorized representative of the individual at issue, we must rule conditionally. Thus, if the examinee designates the requestor in writing, the department has the discretion to release the polygraph information, which we have marked, to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code. *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees). Otherwise, the department must withhold the information we have marked

under section 552.101 of the Government Code in conjunction with section 1703.306(a) of the Occupations Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). 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 laws with respect to the CHRI it generates. *See 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. 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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find the information we marked consists of CHRI the department must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information (1) containing 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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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 conclude the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must generally withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest.

Thus, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information, we find you have failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the information you have marked under section 552.101 on the basis of constitutional privacy.

Section 552.1175 of the Government Code 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. *See* Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." *Id.* § 552.1175(a)(1). We note section 552.1175 encompasses a personal cellular telephone number, provided that the governmental body does not pay for the cellular telephone service. *See generally* Open Records Decision No. 506 at 5-6 (1988) (Government Code section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). The information at issue contains information of individuals who are listed as police officers. Accordingly, if the individuals whose information we have marked are currently licensed peace officers and elect to restrict access to the information in accordance with section 552.1175(b), the department must generally withhold the marked information under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. If the individuals are not currently licensed or do not elect to restrict access to the information in accordance with section 552.1175(b), the department may not withhold the information at issue under section 552.1175 of the Government Code. However, you have failed to demonstrate any portion of the remaining information is subject to section 552.1175. Accordingly, the department may not withhold any portion of the remaining information on this basis.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>2</sup> 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 Gov't Code § 552.130(a)*. Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the department must generally withhold the information we marked under section 552.130 of the Government Code.

As noted above, the requestor may be the authorized representative of one of the individuals whose information is at issue. Section 552.023 of the Government Code gives a person's authorized representative a special right of access beyond that of the general public to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect personal privacy. *See id.* § 552.023(a); ORD No. 481 at 4 (privacy theories not implicated when individual's authorized representative requests information concerning the individual). Accordingly, if the requestor is the authorized representative of her spouse, she has a right of access to his information we marked subject to section 552.101 in conjunction with common-law privacy, section 552.1175, and section 552.130. Because these exceptions protect personal privacy, the department may not withhold the information subject to these exceptions from this requestor. However, if the requestor is not the individual's authorized representative and does not have a right of access to the information, then the department must withhold the information we marked subject to section 552.101 in conjunction with common-law privacy, section 552.1175 if the individual is a currently licensed peace officer and elects to restrict access to the information pertaining to him in accordance with section 552.1175(b) and if the marked cellular telephone numbers are not paid for by a governmental body, and section 552.130.

We also note the remaining information contains e-mail addresses. 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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov't Code § 552.137(a)-(c)*. The e-mail addresses contained in the submitted information are not the types specifically excluded by section 552.137(c). We note section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. Therefore, unless the individuals whose respective e-mail addresses are at issue consented to release of the e-mail addresses, the department must generally withhold the marked e-mail addresses

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<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. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

in accordance with section 552.137 of the Government Code. However, the requestor may be the authorized representative of one of the individuals whose e-mail address is at issue, and thus, may have a right of access pursuant to section 552.137(b). *See id.* § 552.137(b). Accordingly, if the requestor is the authorized representative of this individual, the department may not withhold the information we marked under section 552.137 of the Government Code which relates to that individual. If the requestor is not the authorized representative of this individual, the department must withhold the information we marked under section 552.137 of the Government Code, unless the owners consent to disclosure.

In summary, the TCLEOSE number we have marked is not subject to the Act and needs not be released to the requestor. If the requestor is designated by the examinee, the department has the discretion to release the polygraph information, which we have marked, to this requestor pursuant to section 1703.306(a)(1) of the Occupations Code. If the requestor is not designated by the examinee, the department must withhold the information we 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 marked under section 552.101 in conjunction with section 411.083 of the Government Code. To the extent the requestor does not have a right of access to the information, the department must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with common-law privacy, (2) section 552.1175 of the Government Code if the individuals whose information we have marked are currently licensed peace officers and elect to restrict access to the information pertaining to them in accordance with section 552.1175(b) and if the marked cellular telephone numbers are not paid for by a governmental body, (3) section 552.130 of the Government Code, and (4) section 552.137 of the Government Code unless the individuals whose respective e-mail addresses are at issue consented to release of the e-mail addresses. The remaining information must be released.<sup>3</sup>

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](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

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<sup>3</sup>As discussed above, the requestor may have a right of access to some of the information being released in this instance. *See Gov't Code* § 552.023. Because such information would be confidential with respect to the general public, if the department receives another request for this information from a different requestor it must again seek a ruling from this office.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 515389

Enc. Submitted documents

c: Requestor  
(w/o enclosures)