



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2014

Ms. J. Diaz
Assistant City Attorney
Criminal Law and Police Unit
Office of the City Attorney
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2014-09078

Dear Ms. Diaz:

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# 524061 (DPD ORR# 2014-02358).

The Dallas Police Department (the "department") received a request for all records, including audio and video recordings, pertaining to a specified incident. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note one of the submitted discs, which we have indicated, is corrupt and cannot be viewed by this office. As this office cannot review the corrupt disc, we conclude that you have failed to comply with the requirements of section 552.301 of the Government Code

¹We assume the "representative sample" of records 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 that those records contain substantially different types of information than that submitted to this office.

with respect to that information. *See* Gov't Code § 552.301(e)(1)(D). Under section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the presumption that the information is public and must be released, unless there is a compelling reason to withhold the information. *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, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists when the 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 this office is unable to review the corrupt disc, we have no basis to conclude that the information contained therein is confidential by law. Therefore, we have no choice but to order the department to release the information at issue.² If you maintain a legible or audible copy of the information on the disc at issue and believe that any other information contained therein is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below pursuant to section 552.324 of the Government Code.

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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Although you state the information at issue relates to an open or pending criminal investigation or prosecution, the submitted documentation reflects that the investigation at issue is closed, the statutes of limitations have expired on any state criminal charges that could have been prosecuted, and the United States Attorney's Office has declined to pursue prosecution. Further, while you state the case has been reopened, you do not explain how the submitted information pertains to an ongoing criminal investigation. Accordingly, we

²We note Open Records Decision No. 670 allows a governmental body to withhold information subject to section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision under section 552.301. ORD 670 at 6. 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 id.* § 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). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 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 552.147(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 id.* § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public subject to section 552.137 of the Government Code.

conclude you have failed to demonstrate the applicability of section 552.108(a)(1) to the submitted information. Therefore, the department may not withhold any of the responsive information under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”³ Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. We note the submitted information contains Firearms Trace Summaries from the National Trace Center of the Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives (the “ATF”). Public Law number 111-117 states, in pertinent part,

[B]eginning in fiscal year 2010 and thereafter, no funds appropriated under [the Consolidated Appropriations Act, 2010] or any other [a]ct may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the [ATF] or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section 923(g), except to: (1) a Federal, State, local, or tribal law enforcement agency or a Federal, State, or local prosecutor . . . unless such disclosure of such data to an[] . . . entit[y] described in (1) . . . of this proviso would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1) . . . shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State[.]

Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. 3034, 3128 (2009). We understand Firearms Trace Summaries contain content from the Firearms Trace System database maintained by the National Trace Center. Upon review, we find the Firearms Trace Summaries we have marked are confidential under Public Law number 111-117. *See Miller v. U.S. Dep’t of Justice*, 562 F. Supp. 2d 82, 111 (D.D.C. 2008) (holding Firearms Trace Report properly withheld under Freedom of Information Act exemption 3, which covers records that are exempt from disclosure by statute). Accordingly, the department must withhold the Firearms Trace Summaries we have marked under section 552.101 of the Government Code in conjunction with Public Law number 111-117.

³The 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 552.101 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 that 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.* 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) 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. Similarly, 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. *See id.* § 411.082(2)(B). Accordingly, the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Section 552.101 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 that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have 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.” *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, 348 (Tex. 2010). Upon review, we find the

department must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

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). We note section 552.117 is also applicable to personal cellular telephone numbers, 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). 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 personal information of peace officers we have marked and indicated under section 552.117(a)(2) of the Government Code. However, the cellular telephone numbers we have marked and indicated under section 552.117(a)(2) may only be withheld if the cellular telephone service is not paid for by a governmental body.

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. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses personal cellular telephone numbers, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988). Thus, to the extent information we have marked under section 552.1175 relates to peace officers under article 2.12 who elect to restrict access to their personal information in accordance with section 552.1175(b), such information must be withheld under section 552.1175 of the Government Code. However, the cellular telephone numbers we marked may only be withheld under section 552.1175 if a governmental body does not pay for the cellular telephone service. If the individuals whose information is at issue are not currently licensed peace officers under article 2.12 of the Code of Criminal Procedure, or do not elect to restrict access to personal information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)–(c). The e-mail addresses we marked are not excluded by subsection (c). Accordingly, the department must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless their owner affirmatively consents to their disclosure.

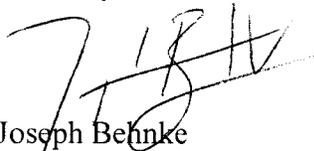
In summary, the department must release the information on the submitted disc we have indicated is corrupted pursuant to section 552.302 of the Government Code. The department must withhold the Firearms Trace Summaries we have marked under section 552.101 of the Government Code in conjunction with Public Law number 111-117. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. 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 the dates of birth we have marked under section 552.102(a) of the Government Code. The department must withhold the personal information of peace officers we have marked and indicated under section 552.117(a)(2) of the Government Code. However, the cellular telephone numbers we have marked and indicated under section 552.117(a)(2) may only be withheld if the cellular telephone service is not paid for by a governmental body. To the extent information we have marked under section 552.1175 relates to individuals who are peace officers under article 2.12 who elect to restrict access to their personal information in accordance with section 552.1175(b), such information must be withheld under section 552.1175 of the Government Code. However, the cellular telephone numbers we marked under section 552.1175 may only be withheld if the cellular telephone service is not paid for by a governmental body. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless their owner affirmatively consents to their disclosure. The remaining submitted information must be released to the requestor.

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,

A handwritten signature in black ink, appearing to read 'JB' with a large flourish underneath.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 524061

Enc. Submitted documents

c: Requestor
(w/o enclosures)