



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 13, 2014

Ms. Donna L. Johnson  
Counsel for the City of Stafford  
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2727 Allen Parkway, Suite 600  
Houston, Texas 77019-2133

OR2014-14118

Dear Ms. Johnson:

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# 532721 (ORR# COS14-024).

The Stafford Police Department (the "department"), which you represent, received a request for the complete employment file of each department peace officer whose employment was terminated during a specified time period.<sup>1</sup> You state the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code, access device numbers pursuant to section 552.136(c) of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>2</sup> You also indicate the

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<sup>1</sup>You inform us the department sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the requestor narrowed the request for information on May 28, 2014. *See id.* § 552.263(e-1) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, modified request for information is considered to have been received on date governmental body receives modified request).

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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). Section 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 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).

department will withhold e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>3</sup> 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 552.101 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 chapter 55 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* art. 55.04, § 1. This office has determined records subject to an expunction order are not subject to public disclosure under the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”).

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<sup>3</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

The submitted documentation includes an expunction order. Thus, we find any information to which the submitted expunction order pertains is confidential under article 55.03 of the Code of Criminal Procedure. Accordingly, to the extent the submitted information is the subject of the expunction order, the department must withhold the information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure.<sup>4</sup> To the extent the submitted information is not subject to the submitted expunction order, the department may not withhold the information under section 552.101 on the basis of article 55.03, and the department must dispose of any such information in accordance with the rest of this ruling.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). However, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982). The department states some of the submitted information pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we find section 552.108(a)(2) is applicable to the information at issue, which you have marked. Accordingly, the department may withhold the information you marked under section 552.108(a)(2) of the Government Code.<sup>5</sup>

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. This office has 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

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<sup>4</sup>As our ruling is dispositive for any such information, we need not address your argument under section 552.108 of the Government Code against its disclosure.

<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Some of the remaining information may be subject to section 552.117 of the Government Code.<sup>6</sup> 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. We have marked information under section 552.117 that consists of the personal information of a peace officer who was employed by the department and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the department may not withhold the marked information under section 552.117(a)(2).

If the information we marked under section 552.117 pertains to an individual who is no longer a licensed peace officer, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 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 be withheld under section 552.117(a)(1) only on behalf of a current or former 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. Therefore, if the individual at issue is no longer a peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the marked information under section 552.117(a)(1) of

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<sup>6</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).

the Government Code. Conversely, if the individual at issue is no longer a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, the department may not withhold the marked information under section 552.117(a)(1).

In summary, to the extent the submitted information is the subject of the expunction order, the department must withhold such information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. To the extent the submitted information is not subject to the submitted expunction order, the department (1) may withhold the information you marked under section 552.108(a)(2) of the Government Code; (2) must withhold the information we marked under section 552.117(a)(2) of the Government Code, if the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure; (3) must withhold the information we marked under section 552.117(a)(1) of the Government Code, if the individual at issue is no longer a peace officer as defined by article 2.12 and if the individual timely requested confidentiality under section 552.024 of the Government Code; and (4) 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 532721

Enc. Submitted documents

c: Requestor  
(w/o enclosures)