



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1996

Ms. Sandra C. Camacho
Assistant City Attorney
Criminal and Police Division
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR96-1025

Dear Ms. Camacho:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39937.

The City of Dallas (the "city") received a request for copies of the employment records of three Dallas police officers. You claim that these records are excepted from disclosure in their entirety under section 552.103 of the Government Code. You also contend that portions of these records are excepted from disclosure under sections 552.026, 552.101, 552.102, 552.114, 552.115, and 552.117 of the Government Code. You have submitted a representative sample of the requested records to this office for our review.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

The purpose of section 552.103 is to protect a governmental body's position in litigation by forcing parties to obtain information relating to the litigation through the discovery process. Open Records Decision No. 551 (1990). A governmental body that is a party to pending litigation has discretion to determine whether it should claim section 552.103 for information related to the litigation. *See id.*; Open Records Decision No. 511 (1988). You claim that the requested records are related to pending litigation, *State of Texas v. John Julian Altier, III*, Cause No. MB-9559073, and that they should therefore be excepted from disclosure under section 552.103. However, the city is not a party to this litigation. Consequently, the city has no section 552.103 interest in information related to the litigation. *See* Open Records Decision No. 392 (1983).

In this type of situation, we require an affirmative representation from the prosecuting attorney representing the State of Texas in the litigation that he or she wants the employment records at issue withheld from disclosure under section 552.103. Pursuant to section 552.303(c), this office notified you by facsimile dated May 3, 1996 that we required this affirmative representation from the prosecuting attorney in order to render a decision on your section 552.103 claim. We requested that you provide this information to our office within seven days of the date you received the notice. The notice further stated that, pursuant to section 552.303(e), failure to comply would result in the legal presumption that the information at issue was presumed public.

You did not provide us with the additional information we requested by facsimile. Accordingly, we conclude that you have not met your burden under section 552.103, and the requested records may not be withheld pursuant to section 552.103. Unless the records are protected under one of the other exceptions to disclosure that you have claimed, the records are presumed public and must be released to the requestor.

We understand that Dallas is a civil service city under the Texas Local Government Code. Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas*

Attorney General, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).² It does not appear that any of the records you submitted to us for review are part of the files maintained by the police department under section 143.089(g). If any of them are, the city must withhold those records from disclosure under section 552.101 as information deemed confidential by statute.

Section 552.117 excepts from disclosure:

information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

The requested records contain information that is excepted from disclosure under section 552.117(2). The city must withhold those portions of the records that reveal the officers' home addresses, home telephone numbers, and social security numbers. The city must also withhold the officers' *former* home address and telephone information from disclosure. See Open Records Decision No. 622 (1994). The records include copies of an officer's birth certificate and copies of several other documents that reveal information about that officer's family members. The city must withhold these documents from disclosure under section 552.117(2).³ We have marked these documents accordingly. The plain language of section 552.117 does not cover an officer's fingerprints. Therefore, the city may not withhold fingerprints under section 552.117.

Next, you claim that the officers' official school transcripts and other information relating to their educational background, as well as their fingerprints are excepted from disclosure under sections 552.101 and 552.102, because these types of information are "highly personal." Section 552.101 excepts from disclosure information that is protected

²We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

³Because we conclude that the city must withhold the officer's birth certificates under section 552.117, we do not address your claim that the birth certificates are excepted from disclosure under sections 552.101, 552.102, or 552.115.

by the doctrine of common-law privacy. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and
- (2) the information is not of legitimate concern to the public.

Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The public has a legitimate interest in the job qualifications, including official transcripts, of public employees. Open Records Decision Nos. 470 (1987), 467 (1987). You cite no authority for your contention that fingerprints are highly intimate or embarrassing, nor do we believe this to be the case. Therefore, neither the officers' educational records nor their fingerprints are excepted from disclosure under sections 552.101 or 552.102 of the Government Code.

Finally, you claim that the officers' educational records are excepted from disclosure under sections 552.026 and 552.114 of the Government Code. Section 552.114(a) excepts from disclosure "information in a student record *at an educational institution* funded wholly or partly by state revenue" (emphasis added). Section 552.114(a) only protects student records in the hands of "educational institutions." Section 552.114(a) does not except from disclosure educational records held by the city in police officers' personnel files. Section 552.026 provides that the Open Records Act does not require release of information contained in education records protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. However, FERPA only protects education records held by: 1) an "educational agency or institution" as that term is defined in 20 U.S.C. § 1232g(a)(3); or 2) state and local educational officials who have access education records for auditing purposes as provided for in 20 U.S.C. § 1232g(b)(4)(B)(5). Therefore, FERPA does not protect the officers' educational records in the hands of the city.

In sum, the city did not meet its burden of showing how section 552.103 of the Government Code applies to the requested records and, therefore, none of the records are excepted from disclosure under section 552.103. If any of the requested records are part of files maintained by the police department under section 143.089(g) of the Local Government Code, the city must withhold those records under section 552.101 as information deemed confidential by law. Section 552.117(2) protects the officers' home addresses, home telephone numbers, social security numbers, former home address and

telephone information, and documents that reveal whether the officers have family members. None of the exceptions to disclosure that the city has claimed protect either the officers' fingerprints or education records.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 39937

Enclosures: Submitted documents

cc: Ms. Linda A. Altier
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(w/o enclosures)