



February 8, 1999

Ms. Deesha Brown  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
2014 Main, Room 206  
Dallas, Texas 75201

OR99-0370

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122089.

The Dallas Police Department (the "department") received a request for the personnel file of a specific police officer. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You first assert that photographs of the police officer must be withheld under section 552.119. Section 552.119(a) of the Government Code excepts from required public disclosure "a photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure," with certain exceptions that do not appear relevant here. A photograph that depicts a peace officer may be released only if the peace officer gives written consent to the disclosure. Gov't Code § 552.119(b). Consequently, unless the officer has given his written consent or is no longer living, the officer's photograph must be withheld from public disclosure under section 552.119. Open Records Decision No. 536 (1989) (provision which protects police officer's photograph ceases to apply after death of officer).

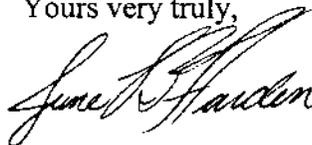
You also claim that the officer's personal financial information must be withheld under common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). After careful review, we have marked the information that must be withheld under common-law privacy. Open Records Decision Nos. 600 (1992), 545 (1990) (personal financial

information not relating to financial transaction between individual and governmental body is protected by common-law privacy).

Finally, you assert that some of the responsive information is confidential criminal history information ("CHRI"). Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, to the extent that the requested information contains CHRI obtained from DPS or another criminal justice agency, you must not release such information to the requestor. The remaining information, however, must be released.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 122089

Enclosures: Marked documents

cc: Ms. Cynthia Curry  
901 Main Street, Suite 4000  
Dallas, Texas 75202  
(w/o enclosures)