



March 23, 2000

Mr. John J. Carlton  
Armburst, Brown & Davis, L.L.P.  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701-4042

OR2000-1142

Dear Mr. Carlton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133545.

The City of Pflugerville (the "city"), which you represent, received a request for information dating back to 1993 held by the city police department related to the requestor or to his residence. The requestor also seeks the personnel files for several city police officers. You have submitted folders labeled 1 through 8 representative samples of the information you have determined to be responsive to the request.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.115, 552.117, and 552.119 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open

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<sup>1</sup>We assume that the "sample" 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.

records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The city provided this office with a statement indicating that the request for public information was received by the city on January 6, 2000. You did not seek a decision from this office until January 27, 2000, more than ten business days after the date the city received the request for information. Consequently, the requested information is therefore presumed to be public. In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). The application of sections 552.101, 552.102, 552.115, 552.117, and 552.119 of the Government Code provides a compelling reason sufficient to overcome the presumption that the submitted information is public.

We note at the outset that the release of some of the responsive documents is governed by the Medical Practice Act, found at Subtitle B of Title 3 of the Occupations Code. Section 159.002(b) states:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

*See* Occ. Code § 159.002(b). We note that sections 159.003 and 159.004 of the Occupations Code provide for exceptions to this confidentiality provision, which generally do not appear to apply here. Therefore, we agree that the type of information submitted in folder 4 is confidential under the Medical Practice Act and must be withheld from disclosure.

You assert that information you have highlighted and submitted in folders 1, 2, 5, 6, and 7 is excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common law privacy and excepts from disclosure private facts about an individual. *Id.* Therefore, information must 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). Section 552.102 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). In *Hubert*

*v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. However, common law privacy does not apply to embarrassing or intimate information "unless the records [at issue] are also of no legitimate interest to the public." Open Records Decision No. 470 at 4 (1987); *see also* Open Records Decision No. 464 (1987). This office has found that common law privacy protects an individual's personal financial information which is not related to a financial transaction between the individual and a governmental body. It appears that some of the submitted information relates to the employees' personal financial decisions which are protected by section 552.101. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). We have supplemented your highlighting by marking specific personal and financial information in folders 2, 5, 6, and 7 which is excepted from disclosure pursuant to section 552.101 and the common law right to privacy. Information that we have not marked must be released to the requestor. We additionally note that financial information that reflects the employee's mandatory contributions to the city's retirement system must be disclosed. Open Records Decision No. 600 (1992). However, it is not apparent from the submitted document in folder 5 whether all of the employee's deductions are mandatory or voluntary. Therefore, we would caution you to evaluate the data carefully before releasing it. *See* Gov't Code § 552.352.

You argue that the information in folder 8 is excepted from disclosure under section 552.115 of the Government Code. Section 552.115 of the Government Code provides an exception to public disclosure of certain birth records maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official. We do not believe this exception applies to a birth record in the city's possession. *See* Open Records Decision No. 338 (1982). Accordingly, the birth record is not excepted from disclosure based on section 552.115. We note, however, that the birth record contains information that may be excepted from disclosure based on section 552.117 of the Government Code, as discussed below.

You also assert that the submitted documents contain information that is protected from disclosure under section 552.117(2). Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members. The term "peace officer" is used as defined by article 2.12 of the Code of Criminal

Procedure. The city must also withhold an officer's *former* address from disclosure. *See* Open Records Decision No. 622 (1994). You indicate that you have highlighted in folder 1 the type of information which you believe is excepted under section 552.117(2) of the Government Code. We have reviewed the highlighted information, and have marked additional information which must be withheld. Further, we have marked information in folders 2 and 8 which must be withheld pursuant to section 552.117(2).

You contend that the information in folder 3 is excepted from disclosure under section 552.119 of the Government Code. Section 552.119 excepts from public disclosure a photograph of a peace officer, that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. This office has determined that this provision excepts such photographs from disclosure without the need for any specific showing that release of the photograph would endanger the life or safety of the officer. Open Records Decision No. 502 (1988). Therefore, unless the officer consents to the release, we agree that you must withhold the photographs of peace officers under section 552.119.

Finally, we note that the submitted information contains Texas driver's license numbers. Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the driver's license numbers. We have marked the information that you must withhold under section 552.130.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson  
Assistant Attorney General  
Open Records Division

CGD/ch

Ref: ID# 133545

Encl. Marked documents

cc: Mr. S. A. Stewart  
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(w/o enclosures)