



September 27, 2000

Mr. James Jeffrey, Jr.
Remington, Jeffrey & Hansen
1306 West Abram Street
Arlington, Texas 76013-1703

OR2000-3718

Dear Mr. Jeffrey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139508.

The Town of Pantego (the "town"), which you represent, received a request for information, as follows:

1. All employment records for Officer Barry Reeves, including any information surrounding the reason(s) for his termination of employment with the Pantego Police Department.
2. Information as to any disciplinary actions received by Officer Reeves, and records of any administrative suspensions and/or hearings he received or was involved in.

You explain that much of the responsive information has been released to the requestor. You have submitted for our review additional responsive documents. You assert that these documents are excepted from disclosure under sections 552.102, 552.108, and 552.119 of the Government Code. We have considered the exceptions you assert and we have reviewed the submitted information.

We first address the section 552.102 assertion. 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 for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Government Code. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Therefore, we consider together whether section 552.102 or section 552.101 in conjunction with the common law right to privacy applies to any of the submitted information.

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. Information must be withheld from the public as implicating the common law right to privacy 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).

This office has found that personal financial information, *not relating to a financial transaction between an individual and a governmental body*, is normally protected by the common law right to privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have marked certain documents and information which implicates the right to privacy of an individual, and which the town must therefore withhold pursuant to section 552.102 and section 552.101 in conjunction with the common law right to privacy. We assume that the information we have marked for withholding and that pertains to the retirement and insurance coverage choices of an individual reflects *optional* choices which were not funded in whole or in part with public monies. *See* Open Records Decision No. 600 at 9-11 (1992) (discussing the circumstances in which financial information related to insurance and retirement programs is subject to the common law right to privacy). We emphasize that the common law right to privacy does not extend to facts regarding an individual’s participation in *mandatory* programs (which do not reveal an individual’s personal financial choices), nor to programs that are funded in whole or in part with public monies (because a legitimate public interest exists in information regarding financial transactions that involve the expenditure of public funds). *Id.* We find that the remaining submitted information is not protected by a right of privacy and may not be withheld on that basis. *See, e.g.*, Open Records Decision Nos. 455 (1987) (public employee’s job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

We next address the section 552.119 assertion. Section 552.119(a) of the Government Code, with exceptions that have not been shown to apply here, prohibits the release of photographs that depict peace officers. Thus, you must withhold any photograph of peace officers under section 552.119(a) unless the peace officer has given written consent to the disclosure of the photograph. *See* Gov’t Code § 552.119(a), (b). We have marked the information at issue. Absent written consent from the officer, you must not release this information.

Next, we address the section 552.108 assertion. Section 552.108 of the Government Code, the “law enforcement” exception, may apply to information “held by a law enforcement

agency or prosecutor.” See Gov’t Code § 552.108(a), (b). You state that certain “signed authorizations for release of personal information” contained in the submitted documents “could be easily subjected to abuse.” Specifically, you contend that because each release states that a photocopy of the release may be submitted in lieu of the original, the “releases would authorize any person purporting to be an authorized agent of the information requesting entity to obtain all records” of the named individual. However, we note that the documents at issue are evidently contained in a town personnel file, and not “held by a law enforcement agency or prosecutor” within the meaning of section 552.108. Moreover, we find your statement concerning a *possible* fraudulent use of the documents to be merely speculative and alone insufficient to demonstrate the applicability of the law enforcement exception to the documents at issue. Thus, we do not believe the documents at issue are excepted from disclosure by the law enforcement exception.

However, in addition to the exceptions you have asserted, we believe that some of the submitted information is made confidential by statute and thereby excepted from disclosure under section 552.101 of the Government Code. As explained below, we also believe that sections 552.117 and 552.130 of the Government Code require the withholding of some of the information at issue.

In addition to the common law right to privacy, section 552.101 excepts from required public disclosure information protected by other statutes. Title 26, section 6103(a) of the United States Code renders tax return information confidential. “Return information” is defined by federal law to include:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

26 U.S.C. § 6103(b)(2)(A). We have marked the documents and information that we consider to be “return information.” The town must withhold from disclosure this confidential “return information” based on section 552.101 in conjunction with federal law.

The submitted documents include an Employment Eligibility Verification form (Form I-9), which we also believe must be withheld under section 552.101 in conjunction with federal law. Section 1324a of title 8 of the United States Code provides that a Form I-9 “may not

be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). As release of the submitted Form I-9 under chapter 552 of the Government Code would be “for purposes other than for enforcement” of the referenced federal statutes, the Form I-9 is excepted from disclosure under section 552.101 in conjunction with section 1324a of title 8 of the United States Code. The document may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system.

Section 552.117 of the Government Code applies to some of the information at issue. This provision reads in relevant part as follows:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

- (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, regardless of whether the officer complies with Section 552.024[.]

Gov’t Code § 552.117(2). Section 552.117(2) requires you to withhold a peace officer’s home address, home telephone number, social security number, and information that would reveal whether the officer has family members. We have marked the submitted documents to indicate the information that the town must withhold pursuant to section 552.117(2). You have submitted an election form signed by the individual, which indicates he elected non-disclosure of only his home address and telephone number pursuant to section 552.117(1) of the Government Code. *See* Gov’t Code §§ 552.024, .117(1). However, we find that section 552.117(2) applies in this instance and additionally excepts the named individual’s social security number and family member information. We note that although the named individual is indicated to no longer be employed by the town as a police officer, the submitted documents indicate that the individual was subsequently employed as a police officer for another governmental entity. We therefore assume that the individual remains a peace officer as defined by article 2.12, Code of Criminal Procedure, and that section 552.117(2) of the Government Code therefore applies.

Finally, we note that the submitted documents also include information excepted under section 552.130 of the Government Code. This section governs the release and use of information obtained from motor vehicle records, and provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

Gov't Code § 552.130. You must withhold from public disclosure the copy of the driver's license and the driver's license numbers based on section 552.130. We have marked the documents accordingly.

In summary, and for your convenience, we have marked with red flags the documents that must be withheld in their entirety, pursuant to sections 552.101, 552.102, 552.117(2), and 552.130, as discussed above. We have also marked with yellow flags the documents that are subject to release, but which contain information that must be redacted, prior to the release of the documents, pursuant to sections 552.101, 552.102, 552.117(2), 552.119, and 552.130, as discussed above. Finally, the documents we have marked with green flags do not contain any information that is excepted from required public disclosure, and therefore must be released in their entirety.

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

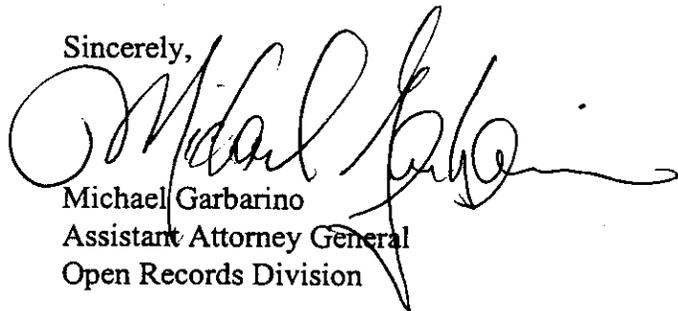
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 139508

Encl. Submitted documents

cc: Ms. Susan Short
P O Box 171874
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(w/o enclosures)