



January 31, 2001

Mr. Ron G. MacFarlane, Jr.  
Sifford, Anderson, Vice & MacFarlane, L.L.P.  
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OR2001-0361

Dear Mr. MacFarlane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143770.

The City of Cedar Hill (the "city"), which you represent, received a request for five categories of information relating to a named police officer, including:

- (1) any documents showing military or law enforcement experience prior to joining the City of Cedar Hill Police Department;
- (2) all law enforcement and related training – especially since his becoming employed by the City of Cedar Hill Police Department;
- (3) any and all recognition(s), award(s), commendation(s), and/or note(s), memorandum or other documentation reflecting any disciplinary action considered or given;
- (4) documents reflecting assignments and/or special duties since becoming a member of the City of Cedar Hill Police Department; and
- (5) any information demonstrating a predisposition to the use of force or racial/ethnic discrimination.

While you state that the city is releasing some of the responsive information to the requestor, you also assert that some of the requested information is excepted from disclosure. You have submitted two packets of information for our review—Exhibits B and C. Exhibit B consists of information from the named officer's personnel file. You contend that some of this information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code. Exhibit C consists of training and testing materials from the named officer's training file. You contend that this information is excepted under sections 552.102, 552.108, 552.117, and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first consider your arguments for withholding information in Exhibit C. Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Having reviewed the materials in Exhibit C, we agree that the actual tests are "test items" as contemplated by section 552.122(b). Therefore, you may withhold the questions and answers in these tests under section 552.122(b). We have marked this information. Based on this finding, we need not reach your remaining claimed exceptions as they apply to the test materials. However, with respect to the training material, you have not shown, nor is it apparent from the face of the material, how this information tests an individual's or group's knowledge or ability in a particular area. Therefore, you may not withhold the training materials under section 552.122 of the Government Code.

You also argue that the training materials are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 provides, in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is obtained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You state that the training materials in Exhibit C “are records of a law enforcement agency that ‘deals with the detection [and/or] investigation ... of crime.’” (brackets in original). Thus, you appear to be invoking section 552.108(a) of the Government Code. You further state that the materials in Exhibit C “contain detailed information as to the procedures utilized by police officers in the City of Cedar Hill, Texas to protect their lives and the lives of citizens of the State of Texas.” Specifically, you claim that the materials “reveal procedures used by police officers in searching suspects, making high risk traffic stops, methods and procedures for the use of force, and arrest procedures,” the release of which “would put officers at risk by informing the public and the criminal element within our society as to the means and methods utilized by police officers to protect themselves in the performance of their duties.” However, upon review of the training materials, we cannot determine how release of this information would reveal the means and methods by which police officers protect themselves. Indeed, most of the training material reflects the types of information in a police report that are generally considered public. *See generally* Gov’t Code § 552.108(c); *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Based on your arguments and our review of the training materials in Exhibit C, we find that you have not met your burden under section 552.108 in proving that release of the training material would interfere with the detection, investigation, or prosecution of crime. *See* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Furthermore, you do not argue that the training material is excepted under other subsections of section 552.108. Therefore, we find that you have not shown the training material to be excepted under section 552.108 of the Government Code.

Next, you claim that the training materials in Exhibit C contain information excepted under section 552.117. You make the same argument with respect to certain information contained in Exhibit B. Section 552.117(2) excepts from disclosure information that relates to a peace officer’s home address, home telephone number, including personal cellular phone number, and social security number, as well as information that reveals whether a peace officer has

family members, regardless of whether the peace officer complied with section 552.024 of the Government Code. After reviewing Exhibits B and C, we agree that certain information contained within the exhibits is excepted from disclosure, and must therefore be withheld, under section 552.117(2). We have marked the information that must be withheld.

Finally, you argue that both Exhibits B and C contain information that is excepted from disclosure under section 552.102 of the Government Code. 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 v. Texas Industrial Accident Board* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the act. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685.

In Open Records Decision No. 373 (1983), we concluded that personal financial information can generally be considered highly intimate and embarrassing:

In our opinion, all financial information relating to an individual — including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history — ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities . . . .

However, information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest not generally protected from public disclosure by common law privacy. Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). For example, the salary of a public employee is not excepted from disclosure. Open Records Decision No. 342 (1982). Further, the doctrine of common law privacy does not generally except from disclosure public employee participation in an insurance program that is funded wholly or partially by his or her employer. Open Records Decision No. 600 at 9 (1992). We agree that most of the personal financial information contained in the submitted documents is excepted under section 552.102. However, the salary information of the officer is of legitimate interest to the public and therefore may not be withheld under section 552.102.

With respect to the remainder of the information you seek to withhold under section 552.102, including driver's license and vehicle information and personal references of the officer, you have not explained, nor is it apparent from the face of the information, how this information constitutes "highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person." Therefore, we find that section 552.102 does not protect this information.

We note, however, that at least some of the driver's license and vehicle information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

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

The submitted documents contain several driver's license numbers that appear to have been issued by the State of Texas. These numbers, which we have marked, must be withheld under section 552.130. The submitted documents also contain license plate and registration information of vehicles belonging to the named officer who is the subject of the request. However, there is no indication regarding whether the officer's license plates and registrations were issued by an agency of the State of Texas. To the extent the license plates and registrations were issued by an agency of the State of Texas, you must withhold the information related thereto.

We also note that Exhibit B contains an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "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. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that I-9 form contained in Exhibit B is confidential under section 552.101<sup>1</sup> and may only be released in compliance with the federal laws and regulations governing the employment verification system.

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<sup>1</sup>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 other statutes.

In summary, you may withhold the submitted tests under section 552.122 of the Government Code. You must withhold the home address and telephone number, social security number, and family member information of the named officer, which we have marked, under section 552.117(2). Likewise, you must withhold the marked personal financial information of the named officer under section 552.102. You must withhold the Texas driver's license, license plate, and registration information under section 552.130. Finally, you must withhold the I-9 form contained in Exhibit B under section 552.101 unless otherwise authorized by federal law. You must release the remainder of the information.

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).

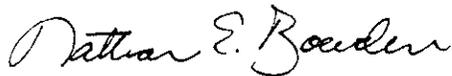
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 Hadassah Schloss at 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/er

Ref: ID# 143770

Encl: Submitted documents

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