



July 11, 2001

Mr. David L. Hay
Dallas County Community College District
R.L. Thornton, Jr. Building
701 Elm Street
Dallas, Texas 75202-3299

OR2001-2979

Dear Mr. Hay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149303.

The Dallas Community College District Police Department (the "department") received a request for information regarding a student and two campus peace officers. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.114, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that Exhibit Nos. 2 and 9, and the insurance policy number in Exhibit No. 13, are excepted from disclosure under section 552.102(a) 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 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, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (providing that the doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public).

This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs,

illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987). After reviewing the submitted information, we agree that Exhibit No. 2 and the insurance policy number in Exhibit No. 13 constitute personal financial information that must be withheld under section 552.102 in conjunction with common law privacy. However, we do not believe that the information in Exhibit No. 9 is excepted under section 552.102 in conjunction with common law privacy.

You assert that Exhibit Nos. 4 and 5 are excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Exhibit Nos. 4 and 5 contain records that the attorney general provided to the department relating to services provided by the attorney general as the Title IV-D agency under chapter 231 of the Family Code. Section 231.108 of the Family Code provides that

(a) Except as provided by Subsection (c), all files and records of services provided under this chapter, including information concerning a custodial parent, noncustodial parent, child, and an alleged or presumed father, are confidential.

The records at issue are confidential under section 231.108(a), but evidently were released to the department in accordance with subsection (c), which authorizes release for certain IV-D purposes. *See* Fam. Code § 231.108(c). It is the well-settled policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. Attorney General Opinion H-683 (1975). The Texas Public Information Act does not undercut that policy. *Id.* Confidential information may thus be transferred between state agencies without destroying its confidential character and without constituting a release to the public if the agency to which the information is transferred has authority to obtain the information. *Id.* at 4; Open Records Decision No. 516 (1989), 490 (1988). Because the department properly obtained the information at issue, we conclude that Exhibit Nos. 4 and 5 are confidential under section 231.108 of the Family Code, and are therefore excepted from disclosure under section 552.101 of the Government Code.

You then contend that Exhibit No. 6 must be withheld under section 552.101. Exhibit No. 6 consists of 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 Form I-9, which you have marked as Exhibit No. 6, is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You also contend that Exhibit No. 7, which consists of an employee W-4 form, must be withheld under section 552.101. Employee W-4 forms are excepted from disclosure under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992). The department must therefore withhold Exhibit No. 7 under section 552.101.

You then argue that Exhibit Nos. 10 and 11 are excepted under section 552.102(b) of the Government Code.¹ Section 552.102(b) excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” We have interpreted “professional public school employee,” to refer to employees of public schools providing “public education” under title 2 of the Education Code, not colleges and universities providing “higher education” under title 3 of the Education Code. Therefore, section 552.102(b) is inapplicable to Exhibit Nos. 11 and 12. Accordingly, the department must release Exhibit Nos. 11 and 12 to the requestor. *See* Open Records Decision Nos. 470 (1987), 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees).

We note, however, that some of the information in Exhibit Nos. 9, 11, 12, 14, 15, and 25 must be withheld from disclosure under section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure “information that relates to the home address, home telephone number, or social security number” of a peace officer, or that reveals whether the peace officer has family members. Therefore, the department must withhold the information we have marked in Exhibit Nos. 9, 11, 12, 14, 15, and 25 under section 552.117(2) of the Government Code. *See also* Open Records Decision No. 670 (2001) (providing that a governmental body may withhold information under section 552.117(2) without requesting a decision from this office).

You contend that portions of Exhibit Nos. 16, 16a, 16b, 16c, 17, 18, 19, 20, and 21, which you have highlighted, are excepted from disclosure under section 552.108 of the Government Code. You indicate that those portions of these Exhibits that you did not highlight will be released to the requestor. You also contend that Exhibit No. 22 is excepted in its entirety under section 552.108. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the information in Exhibit Nos. 16, 16a, 16b, 16c, 17, 18, 19, 20, 21, and 22 pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to these Exhibits.

¹ We note that Exhibit No. 10 was not among the documents submitted to this office. However, as Exhibit No. 12, for which you have made no arguments against disclosure, consists of a community college transcript, we assume that your arguments under section 552.102(b) were meant to apply to Exhibit Nos. 11 and 12.

We note, however, that information normally found on the front page of an offense report is 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). Thus, you must release the types of information that are considered to be front page offense report information, including a detailed description of the offense, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(2) authorizes you to withhold the remaining information in Exhibit Nos. 16, 16a, 16b, 16c, 17, 18, 19, 20, 21, and 22 from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

Next, you claim that portions of the requested information are confidential under section 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. The records at issue here, however, consist of records maintained by a campus police department. Such records are not "student records" within the meaning of section 552.114 of the Government Code. Open Records Decision No. 612 at 3 (1992) (concluding that campus police department records were not excepted by statutory predecessor to section 552.114): Thus, the department may not withhold any portion of the requested information on that basis.

You assert that portions of the information in Exhibit Nos. 23 and 24 are excepted under section 552.130 of the Government Code.² 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[.]

Accordingly, we have marked the information in Exhibit Nos. 23 and 25 that the department must withhold under section 552.130.

Finally, you assert that the photographs of peace officers in Exhibit Nos. 24 and 25 are excepted under section 552.119 of the Government Code.³ Section 552.119 excepts from public disclosure a photograph of a peace officer⁴ that, if released, would endanger the life

²We note that Exhibit No. 24 was not submitted to this office for review.

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⁴"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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. Open Records Decision No. 502 (1988). The photographs in Exhibit No. 25 depict a peace officer and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officer has executed any written consent to disclosure. We therefore agree that the department must withhold the photographs in Exhibit No. 25 pursuant to section 552.119 of the Government Code.

To summarize, we conclude that: (1) Exhibit No. 2 and the insurance policy number in Exhibit No. 13 must be withheld under section 552.102 in conjunction with common law privacy; (2) Exhibit No. 9 may not be withheld under section 552.102 in conjunction with common law privacy; (3) Exhibits No. 4 and 5 must be withheld under section 552.101 in conjunction with section 231.108 of the Family Code; (4) Exhibit No. 6 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing employment verification system; (5) Exhibit No. 7 must be withheld under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code; (6) section 552.102(b) is inapplicable to Exhibit Nos. 11 and 12; (7) the department must withhold the information we have marked in Exhibit Nos. 9, 11, 12, 14, 15, and 25; (8) with the exception of the basic front page offense and arrest information, the department may withhold the information in Exhibit Nos. 16, 16a, 16b, 16c, 17, 18, 19, 20, 21, and 22, based on section 552.108(a)(2); (9) the department may not withhold any of the requested information under section 552.114; (10) the department must withhold the information we have marked in Exhibit Nos. 23 and 25 under section 552.130; and (11) the department must withhold the photographs in Exhibit No. 25 pursuant to section 552.119. The remaining information must be released to the requestor.

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 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

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Enc.: Marked documents

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