



July 27, 2001

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR2001-3266

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149987.

The Pasadena Police Department (the "department") received two requests for information relating to the department and to a named police officer. Because both requests are made for essentially the same information, the department has submitted identical copies of the same information for each request, and because the department argues the same exceptions for the submitted information, we have combined the May 21, 2001 and June 12, 2001 requests together for efficiency of application. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code and sections 552.102, 552.103, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

We first note that in requesting the June 12, 2001 decision, you have not addressed item number 1 of the request for information, nor have you submitted any information that appears to be responsive to this part of the request. We therefore assume that the department has released any records that it holds, or to which it has access, that are responsive to item

¹ You also initially raised sections 552.108 and 552.119. However, you submitted no arguments in support of these exceptions. *See* Gov't Code § 552.301(b), (e)(1)(A).

number 1 of this request for information. If not, then the department must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000).*

Next, we address your representation that you are seeking clarification of certain parts of the requests. Under section 552.222(b) of the Government Code, “[i]f what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request.” You state that items 3, 9, 10, 11, and 13 requested in your May 29, 2001 letter are not retrievable by the method specified by the requestor and require further clarification from him. It appears that information responsive to items 5 and 6 of the second request is the same information that is responsive to items 3 and 13 of the first request. As to the June 12, 2001 request, your reference to item numbers 9, 10, 11, and 13 appears to be in error as the request only seeks seven categories of information. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. *Gov't Code § 552.222(b); see also Open Records Decision Nos. 561 at 8 (1990), 333 (1982).*

Chapter 552 of the Government Code does not require a governmental body to prepare information in a form requested by member of the public. *Open Records Decision No. 467 (1987).* However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. *Open Records Decision No. 561 at 8 (1990).* If the department holds information from which the requested information can be obtained, the department must provide that information to the requestor unless it is otherwise excepted from disclosure. In response to the requests at issue here, you must make a good faith effort to relate the requests to information in the department's possession and help the requestors to clarify their requests by advising them of the types of information available.

You also state that you did not submit certain information that relates to the named police officer in requesting these decisions. Therefore, we must consider whether you failed to comply with section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from public disclosure. Under section 552.301(e), a governmental body that requests our decision must “not later than the 15th business day after the date of receiving the written request [for information] . . . submit to the attorney general . . . a copy of the specific information requested, or submit representative samples if a voluminous amount of information was requested.” *Gov't Code § 552.301(e)(1)(D).* Although you provided this office with the police officer's civil service file, you did not provide this office with a copy or representative sample of the police officer's police department personnel file.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is

presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because you have not submitted the police officer's police department personnel file, we have no basis for determining whether a compelling reason exists for withholding it. Thus, we have no choice but to order the information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. *See Gov't Code § 552.352.*

You contend the submitted civil service personnel file is excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 at 1 (1991). You speculate that the requestors "represent a person charged with DWI or some criminal offense which would fall squarely under the criminal litigation exception." Because the department is not and would not be a party to any criminal litigation, section 552.103 is inapplicable in this instance. Therefore, you may not withhold the submitted information under section 552.103 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* 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). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. 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. This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992)

(personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common law privacy protects assets and income source information). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to benefits must be disclosed if it reflects the employee's mandatory contributions to the benefits plan. Open Records Decision No. 600 (1992). On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the city. *Id.* We have marked the information that you must withhold under section 552.102.

Section 552.130 excepts information relating to a motor vehicle title or registration or a driver's license issued by an agency of this state. We have marked the information that you must withhold under section 552.130.

The records in the civil service personnel file contain information that is excepted from disclosure under section 552.117(2) of the Government Code. Under section 552.117(2), the department must withhold those portions of the records that reveal the officer's home address, home telephone number, social security number, and family member information. The department must also withhold the officer's *former* home addresses and telephone information from disclosure. *See* Open Records Decision No. 622 (1994). We have marked the documents accordingly.

The submitted information contains an employee W-4 form. Employee W-4 forms are excepted from disclosure by section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992).

Lastly, the submitted information 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 Form I-9 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

In summary, you must release the requested information that the department did not submit to this office in requesting these decisions. The department must withhold (a) private financial information, (2) section 552.117(2) information, (3) section 552.130 information,

(4) the W-4 form, and (5) the I-9 form. The remainder of the police officer's civil service file 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 149987

Enc. Marked documents

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