



November 19, 2001

Mr. Christopher Gregg
Gregg & Gregg, PC
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2001-5347

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155046.

The City of Nassau Bay (the "city") received a request for fifteen categories of information related to a named police officer. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first observe that you have submitted only redacted copies of the requested radio logs. While it is entirely appropriate that you have marked the specific information that you assert is excepted from disclosure, *see* Gov't Code § 552.301(e)(2), we advise that in the future, such marked information should be visible to this office so that this office may properly determine whether the specific information at issue is, in fact, subject to the claimed exception.

We note that the submitted information does not appear to include information responsive to categories 4, 5, 6, 8, 10, 11, and 14 of the request. To the extent such information existed at the time the city received the present request, we assume it has been released to the requestor. If not, the city must release such information. Gov't Code §§ 552.301, .302. We next address the submitted information.

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. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information submitted for our review is CHRI generated by TCIC and NCIC. Accordingly, the CHRI is excepted from required public disclosure by section 552.101 of the Government Code.

The submitted information also contains a declaration of medical condition and a declaration of psychological and emotional health. Although you assert that a portion of the requested information is confidential under the Medical Practice Act (the "MPA"), both declarations are instead made confidential by section 1701.306 of the Occupations Code,¹ which provides, in relevant part, as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

¹The Seventy-sixth legislature enacted section 1701.306 of the Occupations Code and repealed section 415.057 of the Government Code without substantive change.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306. We have marked the information that must be withheld pursuant to section 1701.306 of the Occupations Code.

The psychological evaluation included with the submitted information is a mental health record that is protected from disclosure under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. Chapter 611 of the Health and Safety Code provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) provides:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002. Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See* Health and Safety Code § 611.001. Sections 611.004 and 611.0045 provide for access to mental health records only for certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the mental health record that may only be disclosed as provided by the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code.

You argue that section 143.089 of the Local Government Code will except "certain information" in an officer's personnel file from public disclosure. Section 143.089 applies to civil service cities and contemplates two different types of personnel files, one that the civil service director or the director's designee is required to maintain as part of the police officer's civil service file (the "(a)" file), and one that the department may, but is not required to, maintain for its own internal use (the "(g)" file). Local Gov't Code § 143.089(a), (g). You do not, however, inform us that the city is a civil service city, nor have you labeled the specific information which you seek to withhold from disclosure under section 143.089. *See* Gov't Code § 552.301(e)(2) (governmental body must label the submitted information to indicate which exceptions apply to which parts of the copy). We therefore find section 143.089 to be inapplicable to the information at issue.

You claim that some of the information contained in the officer's employment file is excepted from disclosure under section 552.101 in conjunction with common law privacy.

Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). This office has held that personal financial information not related to a financial transaction between an individual and a governmental body is protected by common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). On the other hand, a public employee's job performance does not generally constitute his private affairs. Open Records Decision No. 470 (1987). The public has a genuine interest in information concerning a public employee's job performance and the reasons for dismissal, demotion or promotion. Open Records Decision No. 444 at 5-6 (1986). In addition, the public has a legitimate interest in the job qualifications, including college transcripts, of public employees. ORD 470. Based upon our review of the information at issue, we find that a portion of the information within the submitted documents is private, and must be withheld under section 552.101 of the Government Code in conjunction with common law privacy. We have marked the information accordingly.

The submitted records also include account numbers. The 77th Texas Legislature recently added section 552.136(b) to the Government Code which provides in pertinent part that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." See Act of May 14, 2001, 77th Leg., R.S., S.B. 694 (to be codified at Tex. Gov't Code, § 552.136) (effective May 26, 2001). We have marked the account numbers within the submitted information that must be withheld under section 552.136(b).

The requested records contain information that is excepted from disclosure under section 552.117(2). The city must withhold those portions of the records that reveal the officer's home addresses, home telephone numbers, social security numbers, and family member information. The city must also withhold the officer's *former* home addresses and telephone information from disclosure. See Open Records Decision No. 622 (1994). Section 552.117 will not except from disclosure telephone numbers of mobile or cellular telephones that are provided to employees by a governmental body for work purposes. Open Records Decision No. 506 at 5-6 (1988) (section 552.117 does not apply to cellular phone number accounts paid for by governmental body and intended for use at work for government business). To the extent, however, that the submitted records contain the personal cellular telephone numbers or personal pager numbers of the officer, that information may be excepted under section 552.117(2). We have marked the records that the city must withhold from disclosure under section 552.117(2).

Section 552.119 excepts from public disclosure a photograph of a peace officer² 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. Open Records Decision No. 502 (1988). The submitted copy of a photograph depicts 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 consents to disclosure. Thus, we conclude that you must withhold the photograph depicting a peace officer under section 552.119.

The submitted information contains a Texas driver's license number, a copy of a driver's license, and a vehicle identification number. 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 city must withhold the Texas driver's license number, copy of the driver's license, and vehicle identification number under section 552.130.

In summary, CHRI is excepted from required public disclosure by section 552.101. The marked declaration of medical condition and declaration of psychological and emotional health must be withheld pursuant to section 1701.306 of the Occupations Code. We have marked the mental health record that may only be disclosed as provided by the access provisions of sections 611.004 and 611.0045 of the Health and Safety Code. Personal financial information and other marked information must be withheld from disclosure under section 552.101 in conjunction with common law privacy. Marked account numbers are excepted from disclosure under section 552.136. The city must withhold those portions of the records that reveal the officer's home addresses, home telephone numbers, social security numbers, and family member information under section 552.117(2). The photograph depicting a peace officer is excepted from disclosure under section 552.119, while the Texas driver's license number, copy of a driver's license, and vehicle identification number must

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

be withheld from disclosure under section 552.130. 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 Texas Building and Procurement 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,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 155046

Enc. Submitted documents

c: Mr. Dale Paschall
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(w/o enclosures)