



August 30, 2002

Mr. Brad Norton  
Assistant City Attorney  
City of Austin - Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2002-4895

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167904.

The City of Austin Civil Service Commission (the "city") received a request for "[t]he personnel file of [a named police officer], excluding health and insurance-related documents." You have submitted a single document for our review. Based on your representations, we assume that you have released the remainder of the officer's civil service file. If you have not released it, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302. As for the document you have submitted, it appears that you have already redacted certain personal information about the officer in accordance with a previous determination issued by this office. *See* Open Records Decision No. 670 (2001) (providing that all governmental bodies covered by Public Information Act may withhold home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether individual has family members, of any individual who meets definition of "peace officer" set forth in article 2.12 of Texas Code of Criminal Procedure or "security officer" in section 51.212 of Texas Education Code, without necessity of requesting Attorney General decision as to whether exception under section 552.117(2) applies); *see also* Open Records Decision No. 673 (2001) (discussing two types of previous determinations issued by this office). We have marked additional information that must also be withheld under section 552.117(2). You claim that other portions of the submitted information are excepted from disclosure under sections 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that you have redacted from the submitted document information for which the city has not been granted a previous determination. Section 552.301 of the Government Code requires the governmental body to submit the requested information to this office in a manner that permits us to decide whether the information is excepted from disclosure. In general, redacting information makes it impossible for this office to review those portions of the documents and results in a failure to request a decision in the manner prescribed by

section 552.301. In the future, failure to comply completely with section 552.301 may result in a decision that the requested information is public and must be released in its entirety. *See* Gov't Code §§ 552.006, .301(e), .302. In this instance, however, because we are able to ascertain the types of information that have been redacted and because this information may be confidential by law, we will address whether the redacted categories of information are excepted from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (presumption that information is public and must be released can be overcome by compelling interest to withhold information); *see also* Open Records Decision No. 150 at 2 (1977) (compelling interest is normally that some other source of law makes information confidential or that third party interests are at stake).

We now address your arguments against disclosure. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Id.* In general, a government employee's privacy is narrower than that of persons in the private sector because of the greater public interest in the disclosure of information relating to public employees. *See, e.g.*, Open Records Decision Nos. 470 (1987), 444 (1986), 423 (1984).

We have reviewed the information at issue and have determined that some of it is highly intimate and embarrassing and not of legitimate public concern. This information, which we have marked, must be withheld under section 552.101. *See generally* Open Records Decision Nos. 545 (1990) (common law privacy protects personal financial information not relating to financial transaction between individual and 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).

We also note that the submitted document contains information that must be withheld under 552.101 of the Government Code because it is made confidential by federal law. The Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12101 *et seq.*, provides that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. In addition, information obtained in the course of a "fitness for duty examination," conducted to determine whether an employee is still able to perform the essential functions of his job, is to be treated as a confidential medical record. 29 C.F.R. § 1630.14(c). *See also* Open Records Decision No. 641 (1996). The Equal Employment Opportunity Commission (the "EEOC") has determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National

Labor Relations Board, 3 (Oct. 1, 1997). Having reviewed the submitted information, we conclude that the information we have marked is confidential under the ADA and therefore must be withheld under section 552.101.

In addition, we note that the submitted document contains motor vehicle record information. Section 552.130 of the Government Code 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[.]

By its terms, section 552.130 applies only to Texas-issued motor vehicle records. Accordingly, the Texas-issued driver's license number that you redacted must be withheld under section 552.130. Furthermore, to the extent that the license plate numbers you have redacted were issued by this state, they must also be withheld. If, however, these license plates were issued by another state, they may not be withheld under section 552.130.

In summary, under section 552.101, the city must withhold the information we have marked as being made confidential by common law privacy and by federal law. In addition, the Texas driver's license number must be withheld under section 552.130. The redacted license plate numbers must also be withheld under section 552.130 if these license plates were issued by this state; otherwise, they must be released. All other submitted information must be released.

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

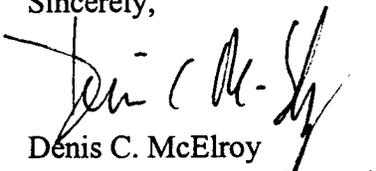
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 167904

Enc. Submitted documents

c: Mr. Mike Rosen  
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(w/o enclosures)