



November 22, 2002

Ms. Elaine S. Hengen
Assistant City Attorney
Office of the City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-6724

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172626.

The City of El Paso (the "city") received a request for information regarding the investigation of a former El Paso Police Department sergeant regarding two incidents that occurred in December 2001. Upon receipt of the city's request for clarification, the requestor clarified and narrowed her request and now seeks the case summary report, the complainant's statements, the sergeant's statement, and sergeant's notice of resignation with respect to the internal affairs investigation of December 9, 2001. *See Gov't Code § 552.222(b)* (authorizing governmental body's request for clarification of records request). You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information pertains to a completed investigation. Thus, this information must be released under section 552.022(a)(1) unless it is expressly confidential under other law or excepted from disclosure under section 552.108.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

You argue that portions of the submitted documents must be withheld under section 552.101 because the public has no legitimate interest in the details of the events giving rise to the former peace officer's resignation. However, as you acknowledge, the work behavior of a public employee and the conditions for his or her continued employment are matters of legitimate public interest not protected by the common law right of privacy. Open Records Decision No. 438 (1986). Similarly, information about a public employee's qualifications, disciplinary action and background is not protected by common law privacy. Open Records Decision No. 444 (1986) (public has obvious interest in having access to information concerning the qualifications and performances of governmental employees, particularly employees who hold positions as sensitive as those held by members of a sheriff's department); *see also* Open Records Decision No. 562 at 9, n.2 (1990) (public has interest in preserving the credibility and effectiveness of the police force). Therefore, we conclude that most of the information you have marked regarding the conduct giving rise to the former peace officer's resignation may not be withheld under section 552.101 and common-law privacy. We have, however, marked some information in which there is no legitimate public interest that must be withheld under section 552.101 and common-law privacy. We also find that the identity of the private citizen involved in the incident giving rise to the former peace officer's resignation is protected under common-law privacy. Thus, we have marked this individual's identifying information, which must be withheld under section 552.101.

¹As you do not raise section 552.108 with respect to the information at issue here, we do not address the applicability of this exception.

Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Thus, we have marked the information in the submitted documents that must be withheld under section 552.117(2).

However, one of the peace officers whose personal information is at issue is no longer employed by the city. Furthermore, we are uncertain whether this individual is still a peace officer. If this individual remains a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, then his information must not be released by the city pursuant to section 552.117(2) of the Government Code. However, if the former peace officer is no longer a licensed peace officer, section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(1)*. Information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request confidentiality in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Accordingly, we conclude that the city must withhold the marked information regarding the former peace officer pursuant to section 552.117(1), if he made a request for confidentiality under section 552.024 of the Government Code prior to the date on which the present request was received by the city, regardless of the fact that he may not currently be a peace officer.

Additionally, the former peace officer's social security number may nevertheless be excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See Open Records Decision No. 622 (1994)*. It is not apparent to us that the social security number contained in the information at issue was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the city, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the city should ensure that this number was not obtained or is not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we have marked the information in the submitted documents that the city must withhold pursuant to section 552.130.

To summarize: (1) we have marked the information that must be withheld under section 552.101 and common-law privacy; (2) we have marked the information that must be withheld under section 552.117(2) for individuals who are licensed peace officers; (3) if the former employee is no longer a licensed peace officer, and the employee made a timely request for confidentiality under section 552.024, the city must withhold his information pursuant to section 552.117(1) of the Government Code; (4) prior to releasing any social security number, the city should ensure that it was not obtained or is not maintained by the city pursuant to any provision of law enacted on or after October 1, 1990; and (5) we have marked the information that must be withheld under section 552.130. The remaining submitted 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. 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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 172626

Enc: Submitted documents

c: Ms. Louie Gilot
El Paso Times
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(w/o enclosures)