



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2004

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2004-0877

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195711.

The Garland Police Department (the "department") received a request for information relating to a former police officer. You claim that some of 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 have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You raise section 552.101 in conjunction with the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing

information attorney general has determined to be private); *see also* Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

Common-law privacy also protects certain types of personal financial information. Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 at 9-12 (1992) (identifying public and private portions of state employees' personnel records); *see also* Open Records Decision Nos. 545 at 4 (1990) ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

We agree that the information that you have highlighted in green is protected by common-law privacy and must be withheld from the requestor under section 552.101. We have marked additional information that also is excepted from public disclosure under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer complies with sections 552.024 or 552.1175. You contend that information relating to the former police officer whose personnel records are the subject of this request for information is excepted from disclosure under section 552.117(a)(2). Assuming that this individual is still a peace officer, we agree that most of the yellow-highlighted information that relates to the former officer is excepted from disclosure under section 552.117(a)(2). We have marked additional information relating to the former officer that would also be excepted from disclosure under section 552.117(a)(2) if he is still a peace officer. We note, however, that the post office box number that you have highlighted is not the officer's "home address" for purposes of section 552.117 and therefore may not be withheld under this exception. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added); *see also* Open Records Decision

Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

If the former police officer is no longer a peace officer, his home address and telephone number, social security number, and family member information may be excepted from disclosure under section 552.117(a)(1). Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of receipt of this request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election of confidentiality under section 552.024. Therefore, if the former officer made a timely election under section 552.024 to keep his section 552.117 information confidential, the department must withhold his home address and telephone number, social security number, and family member information under section 552.117(a)(1).

We note that the submitted personnel records also contain the social security numbers of individuals other than the former officer. You do not indicate whether these individuals are peace officers or whether they are employed by the department or the City of Garland. In the event that any of the additional social security numbers are those of peace officers of the department, any such social security numbers are excepted from disclosure under section 552.117(a)(2). In the event that any of the additional social security numbers are those of other current or former civilian employees of the department or the city, any such social security numbers are excepted from disclosure under section 552.117(a)(1) if they relate to current or former civilian employees of the department or the city who timely elected under section 552.024 to keep their social security numbers confidential.

We also note that section 552.1175 is applicable to the social security number of a peace officer of another governmental entity, a county jailer, as defined by section 1701.001 of the Occupations Code, or a commissioned security officer, as defined by section 1702.002 of the Occupations Code. Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). Thus, if any of the additional social security numbers are those of peace officers, county jailers, or commissioned security officers who elected to restrict access to their social security numbers in accordance with section 552.1175, or are those of individuals who no longer hold such positions but who made elections while they were still peace officers, county jailers, or commissioned security officers, then any such social security numbers are excepted from disclosure under section 552.1175.

The department may also be required to withhold a social security number under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number under any provision of law enacted on or after October 1, 1990.¹ *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the authority to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that the social security number was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

Lastly, we address your claim under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Section 552.130(a)(1) is applicable to information that relates to a Texas driver's license. We agree that the Texas driver's license number that you have highlighted in orange is excepted from disclosure under section 552.130. We have marked additional information that also is excepted from disclosure under this section.

In summary: (1) the green-highlighted information, as well as the private information that we have marked, is excepted from disclosure under section 552.101 of the Government Code; (2) if the former police officer is still a peace officer, then the former officer's home

¹Section 552.101 also encompasses information that another statute makes confidential.

address and telephone number, social security number, and family member information are excepted from disclosure under section 552.117(a)(2); (3) if the former officer is no longer a peace officer, the department may be required to withhold his home address and telephone number, social security number, and family member information under section 552.117(a)(1); (4) the social security number of any other peace officer of the department is excepted from disclosure under section 552.117(a)(2); (5) the social security number of a current or former civilian employee of the department or the City of Garland may be excepted from disclosure under section 552.117(a)(1); (6) the social security number of a current or former peace officer of another governmental entity, a county jailer, or a commissioned security officer may be excepted from disclosure under section 552.1175; (7) a social security number may also be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; and (8) the orange-highlighted information, as well as the additional driver's license information that we have marked, is excepted from disclosure under section 552.130. Any information that is not excepted from disclosure under sections 552.101, 552.117, 552.1175, or 552.130 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 195711

Enc: Submitted documents

c: Mr. Steven R. Green
Law Offices of Mike Head
219 South Prairieville
Athens, Texas 75751
(w/o enclosures)