



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2004

Mr. Robert R. Ray
Assistant City Attorney
City of Longview
P.O. Box 1952
Longview, Texas 75606-1952

OR2004-3486

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200513.

The City of Longview (the "city") received a request for the police reports for Thomas Ray Corbet for his April 11, 2001, arrest on robbery and possession charge, the police reports for Brian Keith Barnett for his February 15, 2003, arrest on several named charges, and various information concerning a retired city firefighter. You state that much of the requested information has been provided to the requestor. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The offense reports include social security numbers. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are

confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.101 also encompasses the doctrine of 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). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

After review of the submitted information, we determine that portions of the information are private and excepted from public disclosure based on section 552.101. We have marked the private information.

You raise section 552.101 in conjunction with Labor Code sections 402.083, 402.086, 402.091, and 402.092 for certain information in the retired firefighter's employment application. Section 402.083, which pertains to records of the Texas Workers' Compensation Commission ("TWCC"), provides in part:

- (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

Labor Code § 402.083(a). Section 402.083(a) makes confidential information in TWCC's claim files.¹ *See* Open Records Decision No. 619 (1993). Section 402.086(a) essentially transfers this confidentiality to information that other parties obtain from TWCC's files. Section 402.086(a) provides:

(a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

Labor Code § 402.086(a). In Open Records Decision No. 533 (1989), this office determined that the predecessor provision to sections 402.083 and 402.086 protected information received from the Industrial Accident Board (now TWCC), but did not protect information regarding workers compensation claims that the governmental body did not receive from TWCC. In this case, the applicant provided the information. Thus, the information was not obtained from TWCC. *See* Open Records Decision No. 533 at 4 (1989). We, therefore, find that sections 402.083 and 402.086 of the Labor Code do not apply in this instance.

Section 402.092 of the Labor Code, which provides confidentiality and exceptions to confidentiality for TWCC investigation files, reads in pertinent part as follows:

(a) Information maintained in the investigation files of the commission is confidential and may not be disclosed except [in four circumstances].

...

(d) For purposes of this section, "investigation file" means any information compiled or maintained by the commission with respect to a commission investigation authorized by law.

Labor Code § 402.092(a), (d). The information at issue is not maintained in the TWCC's investigation files. Consequently, section 402.092 does not make the information confidential. Accordingly, we conclude that the city may not withhold any portion of the responsive information pursuant to section 552.101 of the Government Code in conjunction with section 402.083, 402.086 or 402.092 of the Labor Code.

You raise section 552.108(a)(1) for the reports concerning Mr. Barnett. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation,

¹Section 402.091 makes a Class A misdemeanor the knowing, intentional or reckless publication, disclosure, distribution, or receipt of information made confidential under subchapter E of chapter 402 of the Labor Code. *See* Labor Code § 402.091.

or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You inform us that the report for case number 03-003171 is the subject of an active prosecution by the Gregg County district attorney. You state that the reports for the other cases concerning Mr. Barnett relate to this pending case and contain information that is nearly identical to the information in the report on the pending case. You argue that releasing information from one of the related cases is tantamount to releasing information about the pending case. Based on the information you provided, we agree that section 552.108(a)(1) is applicable to the submitted reports concerning Mr. Barnett.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. —Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the reports concerning Mr. Barnett from disclosure based on section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

You also raise section 552.103 for all of the Barnett information you marked “552.108.” We need not address this claim as we have determined that this information is excepted from disclosure under section 552.108(a)(1).

You raise section 552.117 for portions of the retired fire fighter’s information.² Section 552.117(a)(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. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the city must withhold the employees’ home addresses and

²The city did not raise section 552.117 within the Act’s ten-business-day deadline for raising exceptions to disclosure of requested information. *See* Gov’t Code § 552.301(b). However, because the applicability of section 552.117 is a compelling reason to withhold requested information, we will consider your section 552.117 claim. *See id.* § 552.302; Open Records Decision Nos. 150 (1977); 71 (1975).

telephone numbers, social security numbers, and any information that reveals whether these employees have family members.

In this case, you inform us that, before the city received this request, the retired fire fighter had submitted to the city a signed written statement requesting that his section 552.117 information remain confidential. *See* Gov't Code § 552.024. Thus, we find that section 552.117 applies in this case. We have marked the information the city must withhold from disclosure based on section 552.117.

Finally, we address your section 552.130 claim. 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[.]

Gov't Code § 552.130. We have marked the information the city must withhold based on section 552.130.

In summary, if the social security numbers in the offense reports were obtained or are maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990, the city must withhold the numbers based on section 552.101 in conjunction with federal law. The city must withhold from disclosure the information we have marked based on sections 552.101 (in conjunction with the common-law right to privacy), 552.117 and 552.130 of the Government Code. The city may withhold the information the city marked based on section 552.108 of the Government Code. The city must release the remaining information.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 200513

Enc: Submitted documents

c: Mr. John Lynch
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