



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 27, 2004

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

OR2004-4341

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 202562.

The City of Garland Police Department (the "department") received a request for various personnel information related to a named police officer. You claim that portions of the officer's civil service personnel file are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. You claim that the officer's departmental file and internal affairs records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed 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, such as section 143.089 of the Local Government Code. We understand that the City of Garland is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and

disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.- Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied). Therefore, you must withhold the file you have labeled as the "police department file" under section 552.101 in conjunction with section 143.089(g).

You state that the submitted internal affairs records are maintained in the police department's internal file pursuant to section 143.089(g), and that none of the records are contained in the police officer's civil service file. We therefore conclude that this information is also confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.

Section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer the requestor to the civil service director or the director's designee. You inform us that you have done so, and you have also submitted the named officer's civil service personnel file for our review.

We note that the submitted civil service personnel file contains Form W-4s. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. See Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Tax return information is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. See 26 U.S.C. § 6103(b). We determine that the submitted Form W-4s are tax return information and therefore excepted from disclosure under section 552.101 as information made confidential by federal law.

Section 552.101 also encompasses the doctrine of common law privacy. Information is protected under the common law right to privacy when (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. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common law right to 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 Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 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 under section 552.101 also encompasses certain types of personal financial information. This office has 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 Nos. 600 at 9-12 (1992) (identifying public and private portions of state employees' personnel records), 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). Thus, a public employee's allocation of part of the employee's salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common law privacy. See, e.g., Open Records Decision Nos. 600 at 9-12 (1992) (participation in TexFlex), 545 at 3-5 (1990) (deferred compensation plan). Likewise, an employee's designation of a retirement beneficiary, choice of optional insurance coverage, choice of a particular insurance carrier, decision regarding the direct deposit of compensation and the forms that allow allocation of pretax compensation to group insurance, health care or dependent care are all excepted from disclosure under the common law right to privacy. See Open Records Decision No. 600 at 9-12 (1992). However, where a transaction is funded in part by a governmental body, it involves the employee in a transaction with the governmental body, and the basic facts about that transaction are not protected by common law privacy. *Id.* at 9. Having reviewed the submitted civil service personnel file, we have determined that some of the information, including the change of beneficiary forms, deferred compensation enrollment and notification of change forms, direct deposit processing form, longevity pay options forms and flexible benefit plan forms are excepted from disclosure under section 552.101 in conjunction with the common law right to privacy. We have marked the information you must withhold in its entirety under section 552.101 in conjunction with the common law right to privacy. We note, however, that some of the information you have

highlighted on the "Change of Status Authorization" forms and on two additional documents is not confidential under the common law right to privacy and it is not otherwise excepted from disclosure under any other provision of the Act. We have marked the highlighted information on those documents that you must release.

Next, we address your claim that section 552.117 of the Government Code is applicable to some portions of the submitted civil service personnel file. 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 of the Government Code. Section 552.117(a)(2) excepts the same information regarding a peace officer regardless of whether the officer made an election under section 552.024.<sup>1</sup> Thus, pursuant to section 552.117(a)(2), you must withhold the present and former home addresses and telephone numbers, social security numbers, and family member information that you have highlighted of any individual who is a licensed peace officer. Pursuant to section 552.117(a)(1), you must withhold the same information for any employee or official who was not a licensed peace officer at the time this request was received but who elected, prior to the receipt of this request, to keep such information confidential. We note, however, that you have highlighted a small amount of information on two submitted documents that cannot be withheld under section 552.117(a)(2) or under any other exception to disclosure. We have marked this information that cannot be withheld and must be released.

We also note that you have marked information related to a Texas driver's license. 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[.]

You must withhold the Texas driver's license number and type that you have highlighted under section 552.130.

In summary, you must withhold the information contained in department's internal file, including the internal affairs records, under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The Form W-4s must be withheld under section 552.101 in conjunction with federal law. The personal financial information we have

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<sup>1</sup>"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

marked must be withheld under section 552.101 in conjunction with the common law right to privacy. Pursuant to section 552.117(a)(2), you must withhold the present and former home addresses and telephone numbers, social security numbers, and family member information that you have highlighted of any individual who is a licensed peace officer. Additionally, pursuant to section 552.117(a)(1), you must withhold the same information for any employee or official who was not a licensed peace officer at the time this request was received but who elected, prior to the receipt of this request, to keep such information confidential. You must withhold the Texas driver's license number you have highlighted under section 552.130. All other 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).

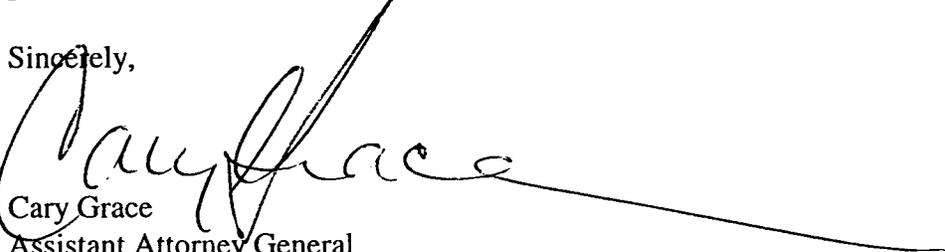
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/krl

Ref: ID# 202562

Enc. Submitted documents

c: Mr. Mark Robinius, Esq.  
620 Main Street  
Garland, Texas 75040  
(w/o enclosures)