



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2005

Ms. Maleshia B. Farmer  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2005-01180

Dear Ms. Farmer:

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# 218616.

The City of Fort Worth (the "city") received two requests from the same requestor for information from the personnel files of two specified department officers. You state that the majority of the requested information will be released to the requestor, with some information redacted pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001).<sup>1</sup> However, you claim that some of the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.117, 552.1175, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the information in Exhibit C is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local

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<sup>1</sup>See Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to chapter 552 of Government Code to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without necessity of requesting attorney general decision under section 552.117(a)(2)); see also Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

Government Code.<sup>2</sup> We understand that the City of Fort Worth 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 a police department may maintain for its own use. See 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). See *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051 - .055. Such investigatory records are subject to release under chapter 552 of the Government Code. See *id.* § 143.089(f); see also Open Records Decision No. 562 at 6 (1990). However, information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. See *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the information in Exhibit C is maintained in the department's internal personnel files pursuant to section 143.089(g) and that none of this information is subject to section 143.089(a). You further indicate that no portion of the information pertains to an investigation that resulted in any disciplinary actions taken against the officer who is associated with the information. Based on your representations and our review of the information at issue, we conclude that the information in Exhibit C is confidential pursuant to section 143.089(g) of the Local Government Code and, thus, must be withheld pursuant to section 552.101 of the Government Code. We have marked this information accordingly.

The submitted information includes L-2 Declarations of Medical Condition and L-3 Declarations of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education that are confidential pursuant to section 1701.306 of the Occupations Code. Section 1701.306 provides as follows:

- (a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

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<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. See Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306. Therefore, the city must withhold the marked declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306 governs information obtained in the course of conducting a polygraph examination and provides that “a person for whom a polygraph examination is conducted . . . may not disclose information acquired from a polygraph examination” except to certain categories of people. The requestor does not fall within any of the enumerated categories; therefore, the information that we have marked is confidential under section 1703.306 and must be withheld under section 552.101.

Criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. CHRI “means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions” but does not include “driving record information maintained by [the Department of Public Safety (‘DPS’)] under Subchapter C, Chapter 521, Transportation Code.” Gov’t Code § 411.082(2). CHRI obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law.

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice

agency. Gov't Code §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. *See id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Thus, to the extent that the submitted documents contain any CHRI that is confidential under federal law or subchapter F of chapter 411 of the Government Code, the city must withhold any such information under section 552.101 of the Government Code.

The submitted information contains fingerprint information. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us and the submitted information does not indicate that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the city must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Prior decisions of this office have determined that personal financial information not related to a transaction between an individual and a governmental body is generally not subject to a legitimate public interest and is therefore protected by common-law privacy. *See* Open Records Decision No. 600 (1992). However, this office has also determined that the essential facts about a financial transaction between an individual and a governmental body generally are subject to a legitimate public interest. *See* Open Records Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 523 (1989). Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). We agree that the personal financial information that you have marked, as well as some additional information that we have marked, is protected by common-law privacy and must be withheld under section 552.101.

You next claim that section 552.117 of the Government Code is applicable to some of the submitted information. Section 552.117(a)(2) excepts the home addresses and telephone

numbers, social security numbers, 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 made an election under section 552.024. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). Therefore, this information in the submitted documents, which we have marked, is excepted from release under section 552.117.<sup>3</sup>

You assert that section 552.130 is also applicable to some of the submitted information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements 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[.]

The Texas motor vehicle information that you have marked must be withheld under section 552.130.

Finally, you claim that the submitted information contains insurance policy numbers that are excepted from disclosure under section 552.136 of the Government Code. This section states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The city must, therefore, withhold the marked information under section 552.136.

To conclude, (1) the information in Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (2) the L-2 and L-3 Declarations must be withheld under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (3) the marked results of polygraph examinations must be withheld under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (4) we have marked the fingerprint information that must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code; (5) to the extent that the submitted documents contain CHRI that was obtained pursuant to state and federal regulations, it must be withheld under section 552.101 as information made confidential by law; (6) the marked information that is confidential under common law privacy must be withheld under section 552.101 of the Government Code, (7) the marked home addresses, social security numbers, and family

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<sup>3</sup>As section 552.117 is dispositive, we do not reach your section 552.1175 claim.

member information of the officers are excepted under section 552.117 of the Government Code, (8) the marked motor vehicle information is excepted under section 552.130 of the Government Code, and (9) the marked insurance policy numbers are excepted under section 552.136 of the Government Code. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 218616

Enc. Submitted documents

c: Mr. Chris Turnbow  
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(w/o enclosures)