



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2005

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

Mr. Randy A. Stoneroad
Police Legal Advisor
City of Corpus Christi
321 John Sartain
Corpus Christi, Texas 78401

OR2005-08641

Dear Ms. Aguilar and Mr. Stoneroad:

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# 232867.

The City of Corpus Christi (the "city") received a request for ten categories of information related to a named police officer and a recent incident. You state that some responsive information has been released to the requestor. You claim that the submitted 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.¹

¹We assume that, to the extent any additional responsive information existed on the date the department received this request, such information has been released to the requestor. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

Initially, we note, and you acknowledge, that the city has not complied with the time period prescribed by section 552.301(b) of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(a), (b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). As your claims under sections 552.101, 552.117, and 552.130 of the Government Code can provide compelling reasons for non-disclosure under section 552.302, we will address your arguments.

The submitted information includes an Employment Eligibility Verification I-9 Form. An I-9 Form is governed by title 8, section 1324a of the United States Code, which provides that the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations.² 8 U.S.C. § 1324a(b)(5). Release of this document under the Act would be “for purposes other than for enforcement” of the referenced federal statute. Accordingly, we conclude that the I-9 Form is confidential for purposes of section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You contend that some of the submitted records are excepted from disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. We understand that the city 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

²Section 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.

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.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055. Such records are subject to release under chapter 552 of the Government Code. *See id.* § 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).

You indicate that the records at issue are maintained in the Corpus Christi Police Department's internal file pursuant to section 143.089(g). You inform us that the information at issue relates to internal investigations that did not result in disciplinary action against the officer. Based on your representation and our review of the documents at issue, we conclude that the information we have marked is confidential pursuant to section 143.089(g) and must be withheld under section 552.101 of the Government Code.

You contend that the submitted audio tape is confidential under sections 771.061, 772.118, 772.218, and 772.318 of the Health and Safety Code. Section 771.061(a) of the Health and Safety Code makes confidential certain information that telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. *See generally* Open Records Decision No. 661 (1999). On the other hand, sections 772.118, 772.218, and 772.318 of the Health and Safety Code make confidential the originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996).

Upon review, we find that the submitted audio tape does not contain an originating telephone number of a 9-1-1 caller furnished by a 9-1-1 service supplier; and the address on the tape was furnished by the caller, not the service provider. Thus, no portion of the submitted audio tape is confidential under sections 771.061, 772.118, 772.218, or 552.318; and the audio tape may not be withheld under section 552.101 of the Government Code on that basis.

Next, you contend that the Texas Municipal Retirement System form submitted as Exhibit C is confidential under section 855.115 of the Government Code. Section 855.115(a) protects certain information contained in records that are in the custody of the Texas Municipal Retirement System concerning an individual member, retiree, annuitant, or beneficiary. The document at issue here is in the custody of the city, not the retirement system. Thus, we conclude that the city may not withhold this information under section 552.101 of the Government Code in conjunction with section 855.115(a) of the Government Code.

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. *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.

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). We have marked the information that the city must withhold under section 552.101 in conjunction with common law privacy.

Section 552.117(a)(2) excepts from 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 officer complies with section 552.024 or section 552.1175. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, we conclude that the city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.

The city may be required to withhold some of the submitted information under section 552.1175 of the Government Code. This exception provides in part:

(a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department in function of the department; and
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code.

(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(a)-(b). The city must withhold the social security number we have marked under section 552.1175 if the employee is currently a jailer and elects to restrict access to this information in accordance with section 552.1175(b).

We next address your claim under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the city must withhold the Texas motor vehicle record information that we have marked pursuant to section 552.130.

Regardless of whether it is excepted from disclosure under section 552.1175 of the Government Code, the marked social security number is excepted from disclosure under section 552.147 of the Government Code³, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold the social security number we have marked under section 552.147.⁴

In summary, the I-9 Form is confidential for purposes of section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system. We have marked the information that is confidential pursuant to section 143.089(g) and must be withheld under section 552.101 of the Government Code. The city must withhold the information we have marked under section 552.101 in conjunction with common law privacy. The city must withhold the marked information under section 552.117. The city must withhold the social security number we have marked under section 552.1175 if the employee is currently a jailer and elects to restrict access to this

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

information in accordance with section 552.1175(b). The city must withhold the Texas motor vehicle record information that we have marked pursuant to section 552.130. Regardless of whether it is excepted from disclosure under section 552.1175 of the Government Code, the marked social security number is excepted from disclosure under section 552.147 of the Government Code. 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, 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); *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 Office of the Attorney General 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. 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 "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 232867

Enc. Submitted documents

c: Ms. Gail Dorn
P. O. Box 23064
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(w/o enclosures)