



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2005

Ms. J. Middlebrooks  
Assistant City Attorney  
Dallas Police Department  
1400 South Lamar Street #300A  
Dallas, Texas 75215-1801

OR2005-11010

Dear Ms. Middlebrooks:

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# 237585.

The City of Dallas Police Department (the "department") received a request for the personnel information regarding a named officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note that the requestor does not seek the officer's social security number, health information, family information, or home address. These types of information in the submitted documents are thus not responsive to the request for information, and the department is not required to release that information in response to this request. Accordingly, we need not address your arguments under section 552.117 of the Government Code.

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You claim that the submitted information contains account numbers that are excepted under section 552.136 of the Government Code. This exception provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. You state that a cellular phone account number and the officer’s credit union account number are excepted under section 552.136. Upon review, we agree that the department must withhold account numbers we have marked, as well as the police officer’s employee number you have marked under section 552.136 of the Government Code.

You claim that the submitted information contains polygraph information. Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 1703.306, which 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. Occ. Code § 1703.306(a). The requestor does not fall within any of the enumerated categories; therefore, the department must withhold the polygraph information, which you have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

You claim that the submitted information contains fingerprint information that is governed by sections 560.001, 560.002, and 560.003 of the Government Code. 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 state that section 560.002 does not permit the release of the fingerprint information in this instance. Accordingly, the department must withhold the fingerprint

information you have marked under section 552.101 and section 560.003 of the Government Code.

Next, you claim that the submitted information contains criminal history record information ("CHRI"), which is also encompassed by section 552.101. CHRI that is generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. After reviewing the submitted information, we agree that some of it consists of CHRI. Accordingly, we have marked the information that must be withheld under section 552.101 of the Government Code. The remaining information is not CHRI and may not be withheld on that basis.

Next, you claim that portions of the submitted information, which you have marked, are excepted from public disclosure under common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) 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. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (1990) (*citing United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); and personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). After reviewing the submitted information, we agree that some of the information you have marked is protected by common-law privacy and must be withheld under section 552.101 of the Government Code. We have also marked additional information that you must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the submitted information contains the addresses and telephone numbers of peace officers not employed by the department. Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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). This provision allows a peace officer who is not employed by the department to elect to restrict access to his home address and telephone number, social security number, and family member information. If the individuals in question are still peace officers and elect to restrict access to their personal information in accordance with section 552.1175, the department must withhold the information we have marked. Otherwise, this information must be released.

You claim that some of the submitted information is excepted under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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; [or]

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a)(1), (2), (3). Upon review, we agree that the department must withhold the Texas-issued motor vehicle record information and the state identification information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Finally, you claim that the submitted information contains an e-mail address. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address, which you have marked, is not of the type specifically excluded by section 552.137(c). You state that the individual whose e-mail address is at issue has not consented to release of their e-mail address. Accordingly, the department must withhold it under section 552.137 of the Government Code.

In summary, the department must withhold the cellular phone account numbers we have marked, as well as the officer’s credit union account number you have marked under section 552.136 of the Government Code. The department must withhold the polygraph information you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the fingerprint information you have marked under section 552.101 and section 560.003 of the Government Code. The department must withhold the CHRI we have marked under section 552.101 of the Government Code. The department must withhold some of the information you have marked, as well as the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals in question are still peace officers and elect to restrict access to their personal information in accordance with section 552.1175, the department must withhold the information we have marked. Otherwise, this information must be released. The department must withhold the information you have marked, as well as the additional information we have marked under section 552.130 of the Government Code. The department must withhold the e-mail address you marked under section 552.137 of the Government Code. The remaining responsive 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).

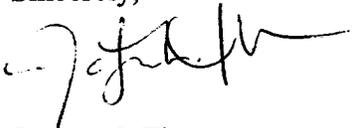
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/sdk

Ref: ID# 237585

Enc. Submitted documents

c: Ms. Tanya Eiserer  
Dallas Morning News  
508 Young Street  
Dallas, Texas 75202  
(w/o enclosures)