



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 13, 2006

Mr. Eric Bentley
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OR2006-13425

Dear Mr. Bentley:

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# 264526.

The University of Houston (the "university") received a request for personnel files and discipline records of three named University of Houston Police Department (the "department") officers, overtime requests, logs, timesheets, and Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") records for the same officers, policy and procedure manuals related to handling criminal complaints against students, and all records of any complaints filed against the department alleging racial profiling over the preceding five years.¹ You state that the university has released the requested policy and procedure manuals. You assert that the university is not able to produce the requested TCLEOSE records. You state that the university will redact social security numbers pursuant to section 552.147 of the Government Code.² You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117,

¹You state, and provide documentation showing, that the requestor clarified his request for overtime requests, logs, timesheets, and policy manuals and procedures. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify). As a result of the narrowed request, the university no longer requests a ruling for information responsive to these portions of the request.

²Section 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.

and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your claim that “the [u]niversity is unable to produce ‘TCLEOSE’ records for the three officers since the [TCLEOSE] is the governmental agency that collects, assembles, and maintains ‘TCLEOSE records’ regarding law enforcement officers in Texas.” “Public information” is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. *See* Open Records Decision No. 635 (1995). In support of your contention, you cite Open Records Decision No. 576 (1990). In that decision, this office determined that an entity performing document maintenance services for a governmental body can become that governmental body’s agent for purposes of receiving a public information request under certain circumstances. Open Records Decision No. 576 at 3-4. There, the legislature had recently shifted the duty of administering and enforcing the Bingo Enabling Act from the Comptroller of Public Accounts (the “comptroller”) to the Texas Alcoholic Beverage Commission (“TABC”). *Id.* at 1. The comptroller and TABC entered into an interagency agreement under which the comptroller agreed to continue to maintain certain computer and microfilm records created prior to the transfer of bingo regulation to TABC. *Id.* The comptroller further agreed to notify TABC promptly upon its receipt of an open records request for the information it maintained. *Id.* On the other hand, TABC agreed to be responsible for replying to any open records requests. *Id.* Based on the express written agreement between the two parties, this office found that the comptroller was the agent of TABC for the purpose of receiving open records requests. *Id.* at 4. However, “[r]esponsibility for responding to the open records request remain[ed] with [TABC].” *Id.* We further found that, for the purposes of the Act, an open records request was considered received by TABC when it was received by the comptroller. *Id.* at 4-5.

In this instance, you do not state, and it does not appear, that the university has reached an interagency agreement with the TCLEOSE to act as its agent. Furthermore, the forms at issue pertain to the professional qualifications of department employees. Because the information at issue was collected, assembled, or maintained by the university in employing peace officers, we determine the information at issue is public information as defined by section 552.002. Gov’t Code § 552.002(a). Thus, the information at issue is subject to the Act and must be released, unless an exception to disclosure is shown to be applicable.

Next, we must address the university's procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, the university did not submit the TCLEOSE records within the fifteen-business-day period prescribed by section 552.301(e). Therefore, the TCLEOSE records are presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because sections 552.101, 552.117, and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to this information.³

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. The submitted information includes L-2 Declarations of Medical Condition and L-3 Declarations of Psychological and Emotional Health required by the TCLEOSE. These declarations are confidential pursuant to section 1701.306 of the Occupations Code, which provides the following:

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

(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

³The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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 university must withhold the L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

You also claim that portions of the submitted information are made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides in relevant part that “[a] report or statement submitted to [the TCLEOSE] under this [subchapter J of chapter 1701 of the Occupations Code] is confidential and is not subject to disclosure under Chapter 552[.]” Occ. Code § 1701.454(a). However, the remaining submitted TCLEOSE forms consist of L-1 and F-7 forms that are not required to be filed with the TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. Therefore, the remaining submitted TCLEOSE forms may not be withheld under section 552.101 on this basis.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. This section provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8). The term “return information” includes “the nature, source, or amount of income” of a taxpayer. Our office has specifically held that a governmental body must withhold a W-4 form in its entirety. Open Records Decision No. 600 at 9 (1992). Accordingly, the university must withhold these forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses the doctrine of common-law privacy. 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). Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). Section 552.102(a) is applicable to information that relates to public officials and employees. The privacy analysis under section 552.102(a) is the same as the common-law-privacy test under section 552.101 of the Government Code. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (addressing statutory predecessor to Gov’t Code § 552.102). Accordingly, we will consider your privacy claim under section 552.101.

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. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history); and certain personal choices relating to financial transactions between the individual and the governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). However, this office has also found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). We have marked portions of the submitted information that must be withheld pursuant to section 552.101 of the Government Code in conjunction with common law privacy. We find, however, that no portion of the remaining submitted information is confidential under common law privacy, and none of it may be withheld under section 552.101 on that basis.⁴

We next address your claim that identities of complainants are excepted from disclosure under the common-law informer's privilege. The common-law informer's privilege, which is also incorporated into the Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). You indicate that portions of the submitted information identify individuals who reported violations article 2.131 of the Texas Code of Criminal Procedure, and you indicate that the violations reported are subject to the department's law enforcement authority. However, you have not demonstrated that any alleged violations would result in a civil or criminal penalty. Thus, we find that the

⁴As our ruling under this issue is dispositive, we need not address your argument under section 552.136 of the Government Code.

department has not met its burden in adequately demonstrating that the informer's privilege is applicable to the submitted information. See Gov't Code § 552.301(e)(1)(A), Open Records Decision Nos. 542 (1990) (concluding that Act places on governmental body burden of establishing why and how exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Consequently, the department may not withhold the complainants' identities pursuant to section 552.101 in conjunction with the informer's privilege.

Next, we address your claim under section 552.108 of the Government Code. This section excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters related to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2). A governmental body claiming subsection 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. However, section 552.108 generally is not applicable to an internal administrative investigation involving a law enforcement officer that did not result in a criminal investigation or prosecution. See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). Exhibit 4 consists of information pertaining to internal administrative investigations of university officers. You do not inform us that these internal affairs investigations have resulted in criminal investigations by the department or a criminal prosecution. Accordingly, we conclude you have not established that Exhibit 4 pertains to a criminal investigation involving these individuals. We therefore conclude that the department may not withhold Exhibit 4 under section 552.108.

Further, you contend that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.117 of the Government Code.⁵ Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests confidentiality under section 552.024 or 552.1175.⁶ Gov't Code § 552.117(a)(2). Based on our review of the remaining submitted information, we conclude

⁵We note that in Open Records Decision No. 670 (2001), the attorney general determined that all governmental bodies may withhold information that reveals a peace officer's home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members without the necessity of requesting an attorney general decision as to whether the exception under section 552.117(a)(2) applies.

⁶"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

that the university must withhold the information that we have marked pursuant to section 552.117(a)(2).⁷

We note that section 552.130 of the Government Code is applicable to portions of the remaining information. Section 552.130 provides in pertinent 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.

Gov't Code § 552.130(a)(1)-(3). Thus, the university must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

The remaining information contains e-mail addresses. 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 addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c). You have not informed us that the individuals to whom these e-mail addresses belong have affirmatively consented to their release. Therefore, the university must withhold the marked e-mail addresses under section 552.137.

In summary, the submitted 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. The submitted W-4 forms are confidential under federal law and must also be withheld under section 552.101. The university must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The university must withhold the information we have marked under sections 552.117(a)(2), 552.130, and 552.137 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.

⁷As our ruling under section 552.117 is dispositive, we do not reach your argument under section 159.002 of the Texas Occupations Code.

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,



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Assistant Attorney General
Open Records Division

LJJ/dh

Ref: ID# 264526

Enc. Submitted documents

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