



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2007

Mr. Dennis C. McElroy
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2007-00753

Dear Mr. McElroy:

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# 269524.

The City of Fort Worth (the "city") received a request for the civil service personnel file for a named individual. You state that the city is releasing some of the requested information, but claim that the remaining information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that a portion of the requested information is subject to a previous ruling issued by this office. On January 5, 2007 this office issued Open Records Letter No. 2007-00177 (2007), in which we ruled that portions of the requested information were excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code and common law privacy. We assume that the pertinent facts and circumstances have not changed since the issuance of that prior ruling. Thus, we determine that the city must continue to rely on our ruling in Open Records Letter No. 2007-00177 as a previous determination and withhold the information at issue under section 552.101 in accordance with that decision. See Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); the governmental body which received the request for the records or information is the same governmental body that

previously requested and received a ruling from the attorney general; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

Next, 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, such as 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 file that must be maintained by the city’s civil service director or the director’s designee, and another file that may be maintained by the city’s police department 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 the police officer, section 143.089(a)(2) requires the department 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 personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the information you have marked is maintained in the internal files of the city’s police department as authorized under section 143.089(g) of the Local Government Code. You also inform us that the information at issue pertains to investigations that have not resulted in disciplinary action against any police officer. Based on these representations, we agree that the information you have marked is confidential pursuant to section 143.089(g) of the Local Government Code and, thus, must be withheld pursuant to section 552.101.¹

¹We note that the city received written authorization from the named police officer for the requestor to obtain the requested information. However, this office has interpreted section 143.089(f) to grant a right of access only to the information in the personnel file maintained in section 143.089(a). *See* Open Records Decision No. 650 at 3 (1996) (the confidentiality provision of section 143.089(g) contains no exceptions); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.—Austin 1993, writ denied) (subsection (g) of section 143.089 expressly forbids release of files maintained thereunder to anyone under any circumstances).

Section 552.101 also encompasses chapter 550 of the Transportation Code. The submitted documents include a CRB-3 accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code.² See Transp. Code § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the information required by section 550.065(c)(4) of the Transportation Code. Accordingly, the city must withhold the submitted CRB-3, which we have marked, pursuant to chapter 550 of the Transportation Code in conjunction with section 552.101 of the Government Code. The remaining information does not consist of an accident report form that has been completed pursuant to chapter 550; therefore, the department may not withhold any of the remaining information under section 550.065 of the Transportation Code.

Section 552.101 also encompasses the doctrine of common law privacy, which 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. See *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.

Generally, only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. See Open Records Decisions Nos. 393 (1983), 339 (1982); see also Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the submitted information includes the investigation of a sexual assault. You inform us that the requestor knows the identity of the victim; thus, withholding only the identifying information from the requestor would not preserve the victim's common law right to privacy. We therefore conclude that the city must withhold the information we have marked pursuant to the common law privacy principles incorporated by section 552.101.

²The Texas Department of Public Safety informs us that the Texas Peace Officer's Accident Report, ST-3 form, has been replaced by the Texas Peace Officer's Crash Report, CRB-3 form.

Next, you claim that some of the remaining information is excepted from disclosure under section 552.130 of the Government Code, which excepts from disclosure information relating to a Texas motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1), (2). This office recently issued a decision, Open Records Letter No. 2006-14726 (2006), that allows the city to withhold a Texas driver's license number, a Texas-issued state identification number, a Texas license plate number, and a Texas license year of a motor vehicle under section 552.130 without the necessity of seeking a decision from this office. *See* Open Records Decision No. 673 at 7 (2001) (previous determinations). In accordance with Open Records Letter No. 2006-14726, you must withhold the information you have marked under section 552.130.

Finally, we address your claim under section 552.137 of the Government Code. Section 552.137 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 at issue does not appear to be of a type specifically excluded by section 552.137(c). Thus, the city must withhold the personal e-mail address you have marked under section 552.137 unless the owner of the email address has affirmatively consented to its release. *See id.* § 552.137(b).

In summary, the city must continue to rely on our ruling in Open Records Letter No. 2007-00177 as a previous determination and withhold the information at issue under section 552.101 in accordance with that decision. In conjunction with section 552.101 of the Government Code, the city must withhold (1) the information you have marked pursuant to section 143.089(g) of the Local Government Code, (2) the CRB-3 form, which we have marked, pursuant to chapter 550 of the Transportation Code, and (3) the information we have marked under common law privacy. In accordance with Open Records Letter No. 2006-14726, the city must withhold the information you have marked under section 552.130 of the Government Code. The city must also withhold the personal e-mail address you have marked under section 552.137 of the Government Code unless the owner of the email address has affirmatively consented to its release. The remaining submitted 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).

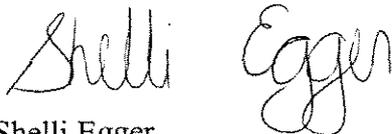
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in cursive script that reads "Shelli Egger". The signature is written in black ink and is positioned to the left of the typed name.

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 269524

Enc. Submitted documents

c: Mr. Richard W. Carter
CLEAT Legal Services
904 Collier, Suite 100
Fort Worth, Texas 76102
(w/o enclosures)