



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2007

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 53404
Grand Prairie, Texas 75053-4045

OR2007-00822

Dear Mr. Alcorn:

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# 269781.

The City of Grand Prairie (the "city") received two requests from the same requestor for the following information: 1) employment applications of two named officers, 2) any internal affairs investigations of these officers, including a description of the incident and corrective action taken, and 3) all citations and arrest reports written by one of the named officers during a specified time period. You state that the city does not have information responsive to the request for internal affairs investigations, but claim that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.102, 552.108, and 552.117 of the Government Code.¹ We also understand you to raise section 552.130 for a portion of the submitted information. We have considered the exceptions you claim and reviewed the submitted information.

¹We note that the Act does not require you to release information that did not exist when the city received this request, create responsive information, or obtain information that is not held by or on behalf of the city. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 534 at 2-3 (1989), 518 at 3 (1989), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note that you have redacted portions of the submitted information, including social security numbers. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information properly labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. See Gov't Code §§ 552.301(a), .301(e)(2). With the exception of social security numbers, this office has not issued the city a previous determination to withhold the types of information you have redacted.² As such, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. As we are able in this instance to ascertain the nature of the information that you have redacted, we will determine whether it is excepted from public disclosure. In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling, unless the information at issue is subject to a previous determination issued by this office. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *Id.*

Next, we note that the issue of whether an individual's date of birth is private is currently before the Third Court of Appeals: *Greg Abbott, Attorney General of Texas v. State Bar of Texas*, No. 03-06-00592-CV, (Tex. App.—Austin Oct.3, 2006). Accordingly, we do not address your arguments with regard to the birth dates that the city seeks to withhold. We will allow the court of appeals to determine whether that type of information must be released to the public.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state 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

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.

section 143.089(a).³ *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 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 state that the submitted employment applications are maintained in the city police department’s internal files created pursuant to section 143.089(g). Based on your representations and our review of the information at issue, we conclude that the submitted employment applications are confidential under section 143.089(g) of the Local Government Code, and must be withheld under section 552.101 of the Government Code.⁴

We understand you to claim that a portion of the remaining submitted information must be withheld under the doctrine of common law privacy. Section 552.101 also encompasses the common law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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. Upon review, we find that none of the remaining submitted information constitutes highly intimate or embarrassing information. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person’s home address and telephone number is not an invasion of privacy). Therefore, the city may not withhold any of the submitted information under section 552.101 on this basis.

However, section 552.130 of the Government Code is applicable to some of the submitted information. This section excepts from public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See* Gov’t Code § 552.130(a)(1), (3). We note that this

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-143.055.

⁴As our ruling on this issue is dispositive, we do not address your other arguments for this information.

provision does not protect out-of-state motor vehicle record information. We have marked the information that must be withheld under section 552.130.

In summary, this ruling does not address the birth dates in the submitted information. The applications we have marked must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the information we have marked pursuant to section 552.130 of the Government Code. The remaining 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 black ink, appearing to read "Debbie K. Lee". The signature is fluid and cursive, with a long horizontal stroke at the end.

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/eb

Ref: ID# 269781

Enc. Submitted documents

c: T. K. Grey
1357 Middleton Drive
Cedar Hill, Texas 75104
(w/o enclosures)