



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2007

Ms. Cathy Cunningham
Boyle & Lowry, L.L.P.
4201 Wingren Suite 108
Irving, Texas 75062-2763

OR2007-16288

Dear Ms. Cunningham:

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# 296747.

The City of Keller (the "city") and the Keller Police Department (the "department") (collectively the "city"), which you represent, received a request for 14 categories of information concerning certain named individuals and other matters. You inform us that the city has no information that is responsive to parts of the request.¹ You also state that some of the requested information either has been or will be released. You have submitted a representative sample of information that the city seeks to withhold under sections 552.101, 552.102, 552.103, 552.104, 552.105, 552.107, 552.108, 552.109, 552.115, 552.116, 552.117, 552.1175, 552.130, 552.131, 552.132, 552.136, 552.137, 552.138, and 552.140 of the

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Government Code.² We have considered the exceptions you claim and have reviewed the submitted information.³

We begin with your statement that the requestor seeks access to information in e-mail messages that have been deleted or emptied from the “trash bin” or “recycle bin” and are no longer available to the city. In general, computer software programs keep track of the location of files by storing the location of data in the “file allocation table” (FAT) of a computer’s hard disk. The software then displays the file as being in a specific storage location. Usually, but not always, when a file is “deleted,” it is not actually deleted, but the display of the location is merely shown to be moved to a “trash bin” or “recycle bin.” Later, when files are “deleted” or “emptied” from these “trash bins,” the data is usually not deleted, but the location of the data is deleted from the FAT. Some software programs immediately delete the location information from the FAT when a file is deleted. Once the location reference is deleted from the FAT, the data may be overwritten and permanently removed.

You state that deletion of the e-messages in question from the “trash bin” or “recycle bin” “results in the deletion of the location of the data.” You contend that, “[a]s a result, the information is no longer available to the [c]ity and is not public information, as it is no longer maintained by the [c]ity.” You indicate that in order to retrieve the information, the city would be required to search backup tapes or run retrieval programs. You assert that the city is being asked to create new information, which the Act does not require. We understand you to state that the e-mail messages in question are not maintained on the hard drive of the computer involved. Based on your representations, we determine that the locations of the files have been deleted from the FAT system. We therefore find that the e-mail messages in question were no longer being “maintained” by the city at the time of this request for information and are not public information that is subject to disclosure under the Act. *See Econ. Opportunities Dev. Corp v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *see also* Gov’t Code §§ 552.002, 552.021 (public information consists of information collected, assembled, or maintained by or for governmental body in connection with transaction of official business); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Accordingly, we conclude that the Act does not require the city to release the e-mail messages in question in response to this request.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³We note that the requestor has informed the city that she does not seek access to home addresses, social security numbers, and medical information. Thus, those types of information are not responsive to this request. This ruling does not address the public availability of the submitted information that is not responsive to the request, and the city need not release that information.

You also inform us that pursuant to sections 552.101, 552.117, 552.1175, and 552.137 of the Government Code, addresses, telephone numbers, and e-mail addresses were redacted from information that the city provided to the requestor. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure, unless the information is the subject of a previous determination. *See* Gov't Code §§ 552.006, .301(a), .302; Open Records Decision No. 673 (2001) (previous determinations). Among other things, a governmental body must submit to this office either the specific information that it seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1)(D). We note that Open Records Decision No. 670 (2001) authorizes all governmental bodies covered by the Act to withhold the home addresses and telephone numbers, personal cellular phone and pager numbers, social security numbers, and family member information of peace officers, as defined by article 2.12 of the Code of Criminal Procedure, without the necessity of requesting an attorney general decision as to whether the information is excepted from disclosure under section 552.117(a)(2) of the Government Code. *See* ORD 670 at 6. We also 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. You do not inform us that the city has any other authorization to withhold information from a requestor without first requesting a decision by this office under the Act. Therefore, except for any information that the city is authorized to withhold pursuant to section 552.117(a)(2) under Open Records Decision No. 670 or section 552.147(b), the city must release the information that was redacted under sections 552.101, 552.117, 552.1175, and 552.137.⁴

We next note that the city failed to comply with section 552.301 in requesting this decision. A governmental body that requests a decision under the Act must submit a copy of the request for information to this office not later than the fifteenth business day after the date of its receipt of the request. *See* Gov't Code § 552.301(e)(1)(B). 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 city did not submit a copy of the request within the fifteen business days prescribed by section 552.301(e). Therefore, the submitted information is 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). Sections 552.103, 552.104, 552.105, 552.107, 552.108, 552.116, and 552.131(b)

⁴We also note that information has been redacted from the documents that you submitted to this office in requesting this decision. As we are able in this instance to discern the nature of the redacted information, 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. *See id.* §§ 552.301(e)(1)(D), .302.

of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. – Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Record Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). In failing to comply with section 552.301, the city has waived all of its discretionary exceptions and may not withhold any of the requested information under sections 552.103, 552.104, 552.105, 552.107, 552.108, 552.116, or 552.131(b). However, the applicability of your other claimed exceptions can provide compelling reasons for non-disclosure, and therefore we will consider whether the city may withhold any of the submitted information under sections 552.101, 552.102, 552.109, 552.115, 552.117, 552.1175, 552.130, 552.131(a), 552.132, 552.136, 552.137, 552.138, and 552.140 of the Government Code.

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 exception encompasses information that other statutes make confidential. Section 6103 of title 26 of the United States Code makes federal tax return information confidential. The term “return information” includes “the nature, source, or amount of income” of a taxpayer. 26 U.S.C. § 6103(b)(2); *see also* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). The city must withhold the W-4 forms that we have marked under section 6103(a) of title 26 of the United States Code.

Criminal history record information (“CHRI”) obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.”⁵ Gov't Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov't Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize

⁵We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2).

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. *See id.* § 411.089(b). We have marked CHRI that the city must withhold under federal law and subchapter F of chapter 411 of the Government Code.

Section 1701.306 of the Occupations Code provides in part:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] 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

(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(a)-(b) (emphasis added). We have marked declarations that the city must withhold under section 1701.306 of the Occupations Code.

Information acquired from a polygraph examination is confidential under section 1703.306 of the Occupations Code, which provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. We have marked information acquired from a polygraph examination that the city must withhold under section 1703.306 of the Occupations Code.

Information relating to juvenile offenders is confidential under section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of

Family Code). Section 58.007 is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Although you contend that one of the submitted documents is a juvenile record, we find that section 58.007(c) is not applicable to that information. We therefore conclude that the city may not withhold any of the submitted information on the basis of section 58.007 of the Family Code.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

Common-law privacy also encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

Section 552.102 of the Government Code 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) protects 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 and *Industrial Foundation*. *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).

Section 552.109 of the Government Code protects “[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy[.]” Gov’t Code § 552.109. In determining whether information is excepted from disclosure under section 552.109, this office relies on the same common-law privacy test that is applicable under section 552.101. *See* Open Records Decision Nos. 506 (1988), 241 (1980), 212 (1978); *see also* Open Records Decision No. 40 (1974) (statutory predecessor to Gov’t Code § 552.109 may protect content of information, but not fact of communication). We also have concluded that section 552.109 protects the privacy interests of elected officials and not those of their correspondents. *See* Open Records Decision Nos. 473 at 3 (1987), 332 at 2 (1982).

Accordingly, we consider your privacy claims under sections 552.101, 552.102, and 552.109 collectively. We note that the information in question is related for the most part to employees of the city and the department. As this office has often stated, information concerning public employees and public employment is generally a matter of legitimate public interest. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee’s private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 405 at 2 (1983) (manner in which public employee’s job was performed cannot be said to be of minimal public interest). Nevertheless, we have marked personal financial and other private information that the city must withhold under section 552.101 in conjunction with common-law privacy. We conclude that the city may not withhold any of the remaining information at issue on privacy grounds under section 552.101, section 552.102, or section 552.109. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); *see also* Open Records Decision Nos. 611 at 1 (1992) (family violence is a crime, not a private matter), 409 at 2 (1984) (identity of burglary victim not protected by common-law privacy).

Turning to the other exceptions you claim, section 552.115 of the Government Code excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because the submitted birth certificates are held by the city or the department, they may not be withheld under section 552.115 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. We note that section 552.117(a)(2) also protects a peace officer’s cellular phone and personal pager

numbers if the officer purchased the cell phone or pager service with his or her own funds. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. To the extent that the information that we have marked under section 552.117 concerns a peace officer, the city must withhold that information under section 552.117(a)(2).

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. To the extent that the information marked under section 552.117 concerns a current or former city employee who timely requested confidentiality for the marked information, the city must withhold that information under section 552.117(a)(1).⁶

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We have marked Texas driver's license and motor vehicle information that the city must withhold under section 552.130.

Section 552.131(a) of the Government Code is applicable to economic development information and provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

⁶As we are able to make these determinations under section 552.117, we do not address section 552.1175 of the Government Code.

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Id. § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only “trade secret[s] of [a] business prospect” and “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” *Id.* Thus, the protection provided by section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). As you have not demonstrated that section 552.131(a) is applicable to any of the remaining information, the city may not withhold any of the information at issue under section 552.131 of the Government Code.

Section 552.132 of the Government Code states in part:

(a) Except as provided by Subsection (d), in this section, “crime victim or claimant” means a victim or claimant under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.

(b) The following information held by the crime victim’s compensation division of the attorney general’s office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

(c) If the crime victim or claimant is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim or claimant and the amount of compensation awarded to that crime victim or claimant are public information and are not excepted from [required public disclosure].

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general’s office or other governmental body that would identify or tend to

identify the victim, including a photograph or other visual representation of the victim.[]

(e) If the employee fails to make an election under Subsection (d), the identifying information is excepted from disclosure until the third anniversary of the date the crime was committed. In case of disability, impairment, or other incapacity of the employee, the election may be made by the guardian of the employee or former employee.

Gov't Code § 552.132. Because the submitted information is held by the city, not the crime victim's compensation division of this office, section 552.132(a) is not applicable in this instance. Moreover, there is no indication that any of the remaining information involves a victim who is an employee of a governmental body, so as to be subject to section 552.132(d). We therefore conclude that the city may not withhold any of the submitted information under section 552.132 of the Government Code.

Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We have marked insurance policy and account numbers that the city must withhold under section 552.136.

Section 552.137 of the Government Code states in part that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked personal e-mail addresses that the city must withhold under section 552.137 of the Government Code unless the owner of the e-mail address has affirmatively consented to its public disclosure.

Section 552.138 of the Government Code provides in part:

(a) In this section:

- (1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.
- (2) "Sexual assault program" has the meaning assigned by Section 420.003.

(b) Information maintained by a family violence shelter center or sexual assault program is excepted from [required public disclosure] if it is information that relates to:

...

(2) the location or physical layout of a family violence shelter center;
[or]

(3) the name, home address, home telephone number, or numeric identifier of a current or a former client of a family violence shelter center or sexual assault program [or]

(4) the provision of services, including counseling and sheltering, to a current or former client of a family violence shelter center or sexual assault program[.]

Id. § 552.138(a), (b)(2)-(4). Section 552.138 applies only to information maintained by a family violence shelter center or sexual assault program. *See* House Comm. on State Affairs, Bill Analysis, Tex. S.B. 15, 77th Leg., R.S. (2001) (Engrossed version) (“Senate Bill 15 amends the Government Code to except family violence shelter centers (center) and sexual assault programs (program) from disclosing certain public information.”). Therefore, because the submitted information is maintained by the city or the police department, and not by a family violence shelter center or sexual assault program, the city may not withhold any of the information at issue under section 552.138 of the Government Code.

Lastly, section 552.140 of the Government Code provides in part:

(a) This section applies only to a military veteran’s Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

Id. § 552.140(a). Because the submitted documents do not include a military veteran’s Form DD-214, the city may not withhold any of the information at issue under section 552.140 of the Government Code.

In summary: (1) the city must withhold the marked information that is confidential under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code, federal law and subchapter F of chapter 411 of the Government Code, sections 1701.306 and 1703.306 of the Occupations Code, and common-law privacy; (2) the information that we have marked under section 552.117 of the Government Code must be withheld under section 552.117(a)(2) to the extent that it concerns a peace officer; (3) the

information marked under section 552.117 must be withheld under section 552.117(a)(1) to the extent that it concerns a current or former city employee who timely requested confidentiality for the marked information under section 552.024 of the Government Code; (4) the marked Texas driver's license and motor vehicle information must be withheld under section 552.130 of the Government Code; (5) the marked insurance policy and account numbers must be withheld under section 552.136 of the Government Code; and (6) the marked e-mail addresses must be withheld under section 552.137 of the Government Code unless the owner of the e-mail address has consented to its disclosure. The rest of the 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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 "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 296747

Enc: Submitted documents

c: Ms. Terry Hickey
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