



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 26, 2008

Ms. Patricia E. Carls
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OR2008-02522

Dear Ms. Carls:

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# 303362.

The City of Georgetown and the Georgetown Police Department (collectively the "city"), which you represent, received requests from three different requestors. The first request seeks disciplinary review records pertaining to a named police officer. The second request seeks civil service records, internal affairs investigations, disciplinary records, and specified interviews pertaining to the named police officer as well as information pertaining to a named individual. The third request seeks the employment application of, and disciplinary and personnel records pertaining to, the named police officer, as well as copies of specified domestic disturbance calls. You state that the city will release some of the requested information in response to the second and third requests. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

¹Although the city additionally asserts section 552.1175, we do not address this exception because the proper exception to raise in this case is section 552.117. Section 552.117 is applicable because the city holds the information at issue in its capacity as employer or former employer of the named officer.

²We 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

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section exempts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You state that the City of Georgetown 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 city may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police city 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 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 city" when they are held by or in possession of the city because of its investigation into a police officer's misconduct, and the city must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police city'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).⁴

You have marked information that the city seeks to withhold under section 143.089 (g). You state that the information at issue is maintained in the city's internal file pursuant to section 143.089(g). Based on your representations and our review of the information at issue, we agree that the city must withhold the information you have marked under

to the extent that those records contain substantially different types of information than that submitted to this office.

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

⁴Section 143.089(g) requires a police city that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee. You indicate that you have done so.

section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.⁵

You claim that some of the remaining information is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. The doctrine of common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

The second request, in part, asks the city for unspecified law enforcement records pertaining to a named individual, thus implicating the individual's right to privacy. Thus, to the extent the city maintains records listing the named individual as a suspect, arrestee, or criminal defendant, the city must withhold this information under section 552.101 in conjunction with common-law privacy. We note that you have submitted records in which the named individual is not listed as a suspect, arrestee, or criminal defendant. Accordingly, we will address your arguments against the disclosure of these records as well as the remaining information.

This office has also 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); and personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990). Upon review, we determine that no portion of the remaining

⁵We note that the marked information includes commendations of the named police officer. We assume that the commendations also are part of the officer's civil service file under section 143.089(a). As our ruling is dispositive, we do not address your other arguments to withhold this information.

information constitutes highly intimate or embarrassing information of no legitimate concern to the public. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy

The city seeks to withhold some of the remaining information under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. . .if. . .release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). We note that some of the remaining information appears to be related to an internal affairs investigation. Section 552.108 is generally not applicable to records of an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor to Gov’t Code § 552.108). You state, however, that the information at issue, including the internal affairs information, is related to a pending criminal prosecution. You also state that the Williamson County Sheriff’s Office has requested that the information at issue be withheld because release would interfere with the pending prosecution. Based on your representations, we conclude that section 552.108(a)(1) is applicable to the information we have marked. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, with the exception of the basic front page offense and arrest information, you may withhold the information we have marked under section 552.108 (a)(1).

Section 552.117(a)(2) of the Government Code excepts the current and former home address and telephone number, social security number, and the family member information of a peace officer regardless of whether the officer made an election under section 552.024 of the Government Code or complies with section 552.1175 of the Government Code. Section 552.117 also encompasses a personal cellular telephone number, provided that the cellular service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). You state that the information you seek to withhold under section 552.117 relates to a peace officer.⁶ Based upon this

⁶“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

representation, with the exception of the information we have marked for release, we agree that the city must withhold the information that you have marked under section 552.117. We have also marked additional information that the city must withhold on this basis.⁷

Finally, we note that some of the remaining information is subject to sections 552.130 and 552.136 of the Government Code.⁸ Section 552.130 excepts from 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 motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130. Thus, the city must withhold the Texas motor-vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 states that "[n]otwithstanding 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." *Id.* § 552.136(b). The city must withhold the information that we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 Government Code in conjunction with section 143.089(g) of the Government Code. To the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of basic information, which must be released, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code. With the exception of the information we have marked for release, the city must withhold the information you have marked pursuant to section 552.117 of the Government Code, in addition to the information we have marked. The city must also withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. 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

⁷As our ruling is dispositive, we need not address your remaining argument for this information.

⁸The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Paige Savoie
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Open Records Division

PS/ma

Ref: ID# 303362

Enc. Submitted documents

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