



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2008

Mr. Brad Young
Bickerstaff, Heath, Delgado, Acosta, L.L.P.
816 Congress Avenue, Suite 1700
Austin, Texas 78701

OR2008-12255

Dear Mr. Young:

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# 322904.

The City of Lakeway (the "city"), which you represent, received a request for the personnel files of all senior and patrol officers. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.119, 552.130, 552.136, 552.137, 552.140, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² Consequently, education records

¹We 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 to the extent that those records contain substantially different types of information than that submitted to this office.

²A copy of this letter may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). Because our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA, we will not address the applicability of FERPA to the information at issue. Such determinations under FERPA must be made by the educational authority from which the city obtained the transcripts. Thus, the city should contact the educational authority from which the transcripts were obtained and the DOE regarding the applicability of FERPA to this information.

We next note that the submitted information contains ST-3 and ST-3C accident report forms that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. 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 Texas Department of Transportation 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.³ *Id.* The requestor has not provided the city with two of the three pieces of information; thus, the city must withhold the accident reports, which we have marked, under section 550.065(b).

The submitted information also includes a W-4 tax form. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including federal law. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the W-4 tax form you have marked is confidential under section 6103(a), and the city must withhold it under section 552.101 of the Government Code.

The submitted information contains fingerprints. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the city must withhold this

³Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Therefore, the city must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

The submitted documents contain information from what appears to be a Texas Commission on Law Enforcement database pertaining to F-5 forms (Report of Separation of License Holder). Section 1701.454 of the Occupations Code provides in relevant part that "[a] report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code." Occ. Code § 1701.454(a). Thus, the city must withhold the information on pages 320 and 321 pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523

(1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). The submitted documents contain personal financial information, and the public does not have a legitimate interest in it. *See* Open Records Decision Nos. 620 (1993), 600. We have marked the information that the city must withhold under section 552.101 in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under common-law privacy, and the city may not withhold it on that ground.

You assert that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home addresses and telephone numbers, social security numbers, and family member information of a peace officer as defined by Article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). We agree that the city must withhold the social security numbers of peace officers you have marked under section 552.117(a)(2). The city must also withhold the information we have marked in the remaining documents under section 552.117(a)(2). The remaining information at issue does not consist of an officer's home address or telephone number, social security number, or family member information; therefore, the city may not withhold any of the remaining information under section 552.117.⁴

Section 552.119 of the Government Code provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

⁴We note that a government body may withhold a peace officer's home address and telephone number, personal cell phone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001); Gov't Code § 552.147(b).

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. After review of your arguments, we find you have not demonstrated, and it is not apparent from our review of the submitted information, that release of the photographs at issue would endanger the life or physical safety of the peace officer depicted; therefore the city may not withhold the photographs of the officer pursuant to section 552.119 of the Government Code.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the city must withhold the Texas motor vehicle record information you have marked under section 552.130.

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136(b) provides 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." The city must withhold the insurance policy and account numbers that we have marked under section 552.136. However, you have not explained how the remaining numbers that you have marked under section 552.136 consist of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* § 552.136(a), 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, you have failed to demonstrate the applicability of section 552.136 to the remaining numbers, and they may not be withheld on that ground.

The city asserts that some of the remaining information is excepted 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 id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137.

You assert that the submitted DD-214 forms are excepted under section 552.140 of the Government Code. Section 552.140 provides that a military veteran's DD-214 form 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 is confidential for a period

of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a), (b). The information on page 184 does not consist of a DD-214 form or military discharge record for purposes of section 552.140; therefore, the city may not withhold this information under section 552.140. Pages 116 and 231 consist of DD-214 forms; however, you do not inform us when the city came into their possession. Therefore, the city must withhold the DD-214 forms on pages 116 and 231 under section 552.140 if they came into the possession of the city on or after September 1, 2003. If these forms were received by the city before September 1, 2003, then the city may not withhold them pursuant to section 552.140.

To conclude, the city must withhold the following information pursuant to section 552.101 of the Government Code: the accident reports we have marked under section 550.065 of the Transportation Code; the W-4 tax form you have marked under section 6103(a) of title 26 of the United States Code; the fingerprints we have marked under section 560.003 of the Government Code; the CHRI we have marked under section 411.083 of the Government Code; pages 320 and 321 under section 1701.454 of the Occupations Code; and the information we have marked under common-law privacy. The city must withhold the social security numbers that you have marked under section 552.117(a)(2) of the Government Code and the remaining information that we have marked under that section. The city must also withhold the information you have marked 552.130 of the Government Code and the information we have marked under sections 552.136 and 552.137 of the Government Code. The city must withhold the submitted DD-214 forms on pages 116 and 231 under section 552.140 of the Government Code if they came into the possession of the city on or after September 1, 2003. The city must release the remaining information. As our ruling is dispositive, we do not address your other arguments to withhold the information at issue.

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). If the governmental body does not file suit over 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

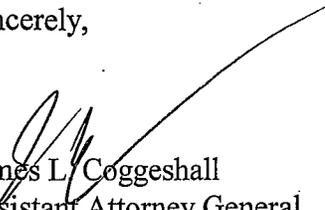
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ma

Ref: ID# 322904

Enc. Submitted documents

c: Mr. John Robert Bartee
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(w/o enclosures)