



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2008

Ms. Martha T. Williams
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2008-13997

Dear Ms. Williams:

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# 324434.

The Spring Valley Village Police Department (the "department"), which you represent, received a request for information related to a towing incident and the personnel files of all officers involved. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains an ST-3 accident report form that was 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. *Id.* In this instance, the requestor has provided the department with two of the three pieces of information; thus, the department must release the accident reports, which we have marked, under section 550.065(b).

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. Section 552.101 encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 Texas 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; however, 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 the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. The department must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also encompasses section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 forms under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we find that the I-9 forms we have marked are confidential under section 552.101 of the Government Code, and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The submitted information also contains L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”) that are subject to section 1701.306 of the Occupations Code, which is encompassed by section 552.101 of the Government Code. Specifically, section 1701.306 provides as follows:

- (a) The commission 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). Therefore, the department must withhold the submitted L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is confidential under common-law privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989) (individuals' mortgage payments, assets, bills, and credit history). The department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2).¹ We note, however, that the protection afforded by section 552.117 does not extend to information relating to a deceased family member. *Cf.* Attorney General Opinions JM-229, H-917 (1976) ("We are... of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death."); Open Records Decision No. 272 (1981). We also note that section 552.117(a)(2) encompasses peace officers' cellular telephone and pager numbers if the officer personally pays for the cell or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* 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). We note that section 552.117 only applies to records that the governmental body is holding in an employment capacity. Accordingly, the department must withhold the

¹ Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

information belonging to the officers at issue that we have marked under section 552.117(a)(2).

You also claim section 552.1175. This section provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The documents also contain the personal information of peace officers who may not be employed by the department. If the individuals at issue are not employed by the department, but qualify as peace officers under section 2.12 of the Code of Criminal Procedure, and elect to restrict access to their personal information in accordance with section 552.1175, the department must withhold the information we have marked. To the extent the individuals at issue do not elect to keep this information confidential, or are not peace officers, it may not be withheld on this basis.

Section 552.119 of the Government Code provides:

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

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate that release of the photograph would endanger the life or physical safety of a peace officer. In this instance, you state that release of the photograph would endanger the life or safety of the peace officer. You have not explained, however, how release of the officer's photograph would endanger the officer's life or physical safety at this time. Accordingly, we determine that the department has failed to demonstrate how the release of the officer's photograph would endanger the life or physical safety of this officer. Therefore, the photograph of the peace officer contained in the remaining information may not be withheld under section 552.119 of the Government Code.

Section 552.130 of the Government Code 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." Gov't Code § 552.130(a)(1)-(2). Some of the motor vehicle information pertains to the requestor; thus, the requestor has a right of access to his own information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987). However, the department must withhold the Texas motor vehicle information to which the requestor does not have a right of access, which we have marked, under section 552.130. We note that if the department is unable to redact the portions of the submitted audio and video recordings that reveal Texas motor vehicle record information, then the department must withhold the recordings in their entirety pursuant to section 552.130. *See* Open Records Decision No. 364 (1983).

In summary, the department must release the information we have marked under section 550.065(b) of the Transportation Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with: (1) section 411.083 of the Government Code, (2) section 1324a of title 8 of the United States Code, (3) section 1701.306 of the Occupations Code, and (4) common-law privacy. The department must withhold the information we have marked under section 552.130 and section 552.117(a)(2). The department must withhold the information we have marked under section 552.1175 if the individuals at issue are not employed by the city, but qualify as "peace officers" under section 2.12 of the Code of Criminal Procedure and elect to restrict access to their personal information. 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 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).

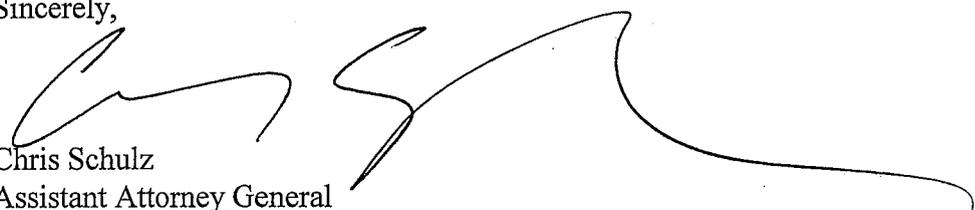
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Chris Schulz
Assistant Attorney General
Open Records Division

CS/ma

Ref: ID# 324434

Enc. Submitted documents

c: Mr. Paul Choate
c/o Ms. Martha T. Williams
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019
(w/o enclosures)