



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2008

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2008-14346

Dear Mr. Phillips:

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#325229.

The City of Fort Worth (the "city") received a request for all personnel files concerning the requestor. You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determinations issued in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You state that you have also redacted social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>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.

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 section excepts from disclosure information deemed confidential by other statutes, 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. *See* 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, section 143.089(a)(2) requires the department 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). *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 the Act. *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 argue that Exhibits C and D are confidential pursuant to section 143.089. You inform us that the information in Exhibit C is maintained in the departmental personnel file of the requestor and pertains to investigations of his alleged misconduct that did not result in discipline. We must note that, while section 143.089(e) grants a police officer or the officer's agent a right of access to information maintained in the officer's civil service file, there is no right of access to information maintained in the officer's internal file. *See* Local Gov't Code § 143.089(e); *see also* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions). You also indicate, and provide supporting documentation, that Exhibit D is maintained in the departmental personnel file of a named police officer and relates to allegations of misconduct by the officer, which did not result in disciplinary action under chapter 143. Upon review of the submitted documents and your representations, we agree that the city must withhold Exhibits C and D under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Section 550.065(b) of the Transportation Code states that accident reports are privileged and confidential, except as provided by subsection (c). Section 550.065(c)(4) authorizes 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. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety ("DPS") or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* The submitted documents in Exhibit F consist of ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (Texas Peace Officer's Accident Report form). In the instant request, the requestor has not provided the required information. Accordingly, the city must withhold Exhibit F pursuant to section 552.101 in conjunction with section 550.065(c) of the Transportation Code.

Section 552.101 also 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 DPS maintains, except that 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 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. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F. However, section 411.081(b) allows a police department to disclose to the public CHRI "that is related to the offense for which a person is involved in the criminal justice system." *Id.* § 411.081(b). Although you have marked information that the city seeks to withhold as CHRI within Exhibit E, we find that no portion of the submitted information constitutes CHRI made confidential under federal law or chapter 411. We therefore conclude that the city may not withhold this information under section 552.101.

Chapter 772 of the Health and Safety Code authorizes the development of local emergency communications districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. *See Open Records Decision No. 649 (1996).* These sections make the originating telephone numbers and addresses of 911 callers that are furnished by a 911 service provider confidential. *Id.* at 2. Section 772.118 applies to an emergency communications district for a county with a population of more than two million. Section 772.218 applies to an emergency communications district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communications district for a county with a population of more than 20,000.

You state that the city is part of an emergency communications district established under section 772.218. You explain that the information you have highlighted was furnished by a 911 service provider. Consequently, the city must withhold the originating addresses and telephone numbers of 911 callers you have highlighted in Exhibit E under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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 (Tex. 1976). The type 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. In addition, this office has 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); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked the information in Exhibit E that the city must withhold under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated that the remaining information is highly intimate or embarrassing information of no legitimate concern to the public. Therefore, this information is not confidential under common-law privacy and may not be withheld on that ground.

Finally, you argue that the remaining information contains Texas motor vehicle record information. 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). Therefore, the city must withhold the information we have marked under section 552.130.

In summary, the city must withhold Exhibits C and D under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold Exhibit F pursuant to section 552.101 of the Government Code in conjunction with section 550.065(c) of the Transportation Code. The originating addresses and telephone numbers of 911 callers within Exhibit E must be withheld under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The city must withhold the information we have marked in Exhibit E

under section 552.101 of the Government Code in conjunction with common-law privacy. The Texas motor vehicle record information we have marked in Exhibit E must be withheld under 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 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,

A handwritten signature in black ink that reads "C. Alvarado". The signature is written in a cursive style with a large, prominent initial "C".

Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/jb

Ref: ID#325229

Enc. Submitted documents

c: Mr. Robert Gonzales  
4320 Travis Street, No. 202  
Dallas, Texas 75205  
(w/o enclosures)