



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2008

Mr. Christopher Gregg
City Attorney
Gregg & Gregg, P.C.
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2008-14719

Dear Mr. Gregg:

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# 326074.

The City of League City (the "city"), which you represent, received a request for employment information pertaining to a named officer. You claim that some of the requested information is exempted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 encompasses information protected by other statutes, such as section 143.089 of the Local Government Code. You inform us 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 a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. 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, 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).¹ *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 id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer’s alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov’t Code § 143.089(b). Information that reasonably relates to a police officer’s employment relationship with the police department and that is 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. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us that the information submitted as Exhibit A is maintained in the city police department’s internal files concerning the officer at issue. Based on your representations and our review of the records at issue, we agree that this information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.

We now turn to the information in Exhibit B, which you indicate is maintained in the officer’s civil service file. The information at issue contains fingerprints. Section 552.101 also encompasses chapter 560 of the Government Code which 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 information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 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

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055.

Records Decision Nos. 545 (1990), 523 (1989) (individuals's mortgage payments, assets, bills, and credit history). The city must withhold the personal financial information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from public disclosure 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 peace officer made an election under section 552.024 or 552.1175 of the Government Code.² We note that section 552.117 is not applicable to birth dates. *See* Gov't Code § 552.117(a). In this case, the submitted information indicates that named officer is no longer employed by the city's police department. If the officer at issue remains a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the city must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code.

If the named officer is no longer a peace officer, his personal information may be excepted under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117(a)(1) if the individual concerned elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individual at issue timely elected, the city must withhold the marked personal information under section 552.117(a)(1). The city may not withhold this information under section 552.117(a)(1), however, if the individual did not make a timely election to keep his information confidential.

You raise section 552.130 of the Government Code for portions of Exhibit B. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

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

Gov't Code § 552.130(a)(1), (2). Upon review, we conclude that the Texas motor vehicle record information that we have marked must be withheld under section 552.130 of the Government Code.

We note that a portion of the remaining information is subject to section 552.137 of the Government Code.³ This section 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). We find that the e-mail address at issue is not of the type specifically excluded by section 552.137(c). Therefore, unless the individual at issue consented to the release of the e-mail address, the city must withhold the marked e-mail address in accordance with section 552.137 of the Government Code.

In summary, the city must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code and the personal financial information we have marked under section 552.101 in conjunction with common-law privacy. The Texas motor vehicle record information we have marked in Exhibit B must be withheld under section 552.130 of the Government Code. To the extent that the personal information we have marked in Exhibit B pertains to an individual who is a licensed peace officer, this information must be withheld pursuant to section 552.117(a)(2) of the Government Code. Pursuant to section 552.117(a)(1) of the Government Code, the same personal information contained in Exhibit B must be withheld if this individual is not a licensed peace officer, but timely elected confidentiality under section 552.024 of the Government Code.⁴ Unless the individual at issue consented to the release of the e-mail address, the city must withhold the marked e-mail address in accordance with section 552.137 of the Government Code. The remaining information must be released to the requestor.

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

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴Regardless of the applicability of section 552.117, 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.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 326074

Enc. Submitted documents

c: Mr. Calvin Parks
Maloney & Parks, LLP
1100 Nasa Parkway, Suite 310
Houston, Texas 77058
(w/o enclosures)