



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2008

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Calvin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2008-14839

Dear Mr. Schneider:

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# 326354.

The Seabrook Police Department (the "department"), which you represent, received a request for the employment application, disciplinary records, internal affairs department records, and commendations of a named officer. You state that you have released most of the responsive information. You claim that portions of the remaining information are excepted 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 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 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that certain personal financial decisions not relating to a financial transaction between an individual and a governmental body are generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). We find that the records contain personal financial information that is intimate and embarrassing and not of legitimate public interest. We have

marked the information that must be withheld under section 552.101 in conjunction with common-law privacy. You also seek to withhold under common-law privacy the name of an automobile insurance carrier and the name of a financial institution. You have not, however, provided any arguments explaining how this information is intimate or embarrassing. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Therefore, because the department has failed to demonstrate that this information is protected by privacy, it must be released.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). By its terms, section 552.117 is not applicable to a peace officer's birth date. *Id.* § 552.117(a). Accordingly, the peace officer's birth date must be released. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You state that the named individual is a peace officer under article 2.12 of the Code of Criminal Procedure. Accordingly, the marked information must be withheld under section 552.117 of the Government Code.

You also seek to withhold the home address and home telephone number of a peace officer who is not employed by the department. Because this information does not pertain to an employee of the department, section 552.117 is not applicable to it. *See id.* § 552.117 (providing that employees of governmental entities may protect certain personal information held by their employers). However, section 552.1175 of the Government Code may be applicable to this information. This section provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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.

Id. § 552.1175(a), (b). Thus, if this peace officer elects to restrict access to her home address and home telephone number in accordance with section 552.1175(b), the department must withhold this information under section 552.1175. If no election is made, this peace officer's home address and home telephone number must be released.

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[.]" *Id.* § 552.130 (a)(1). We agree that the marked Texas driver's license numbers must be withheld under section 552.130. You have also marked the state of issuance of a specific driver's license. Generally, this office does not withhold the state of issuance because in order for section 552.130 to be applicable, the motor vehicle information must be issued by an agency of the state of Texas. Accordingly, except for the state of issuance, the department must withhold the marked information under section 552.130 of the Government Code.

Finally, you generally assert section 12.003 of the Human Resources Code. Section 552.101 also encompasses information made confidential by statute. Section 552.101 encompasses section 12.003 which provides in relevant part:

(a) Except for purposes directly connected with the administration of the [Texas Department of Human Services'] assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information* concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the [Texas Department of Human Services] or acquired by employees of the [Texas Department of Human Services] in the performance of their official duties.

Hum. Res. Code § 12.003(a) (emphasis added). This statute only protects certain information collected and maintained by the Texas Department of Human Services as part of that agency's administration of certain assistance programs. *See* Open Records Decision Nos. 584 (1991), 166 (1977). Accordingly, you have failed to demonstrate that the remaining information is confidential under section 12.003.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Except for the peace officer's birth date which we have marked for release, the department must withhold the information you have marked under section 552.117. If the peace officer, who is not employed by the department, elects to restrict access to her home address and home telephone number in

accordance with section 552.1175(b), the department must withhold this information under section 552.1175 of the Government Code. If no election is made, the information must be released. Except for the state of issuance, the department must withhold the marked driver's license numbers 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,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 326354

Enc. Submitted documents

c: Mr. David Kiatti
770 South Post Oak Lane, Suite 620
Houston, Texas 77056
(w/o enclosures)