



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 10, 2008

Mr. Ron G. MacFarlane, Jr.
Dealey, Zimmermann, Clark, Malouf & MacFarlane, P.C.
3131 Turtle Creek Boulevard, Suite 1201
Dallas, Texas 75219-5415

OR2008-16848

Dear Mr. MacFarlane:

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# 329626.

The City of Cedar Hill (the "city"), which you represent, received a request for the personnel file of a former city police officer. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 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 information made confidential by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). Thus, we agree the submitted W-4 forms constitute tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

Section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential.¹ We note that a post office box number is not a "home address" for purposes

¹"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

of section 552.117.² Upon review, we agree that most of the information you have marked is subject to section 552.117(a)(2). Thus, with the exception of the information we have marked for release, you must withhold the information you have marked under section 552.117(a)(2). You must also withhold the additional information we have marked under section 552.117(a)(2). The remaining information we have marked for release is not the type of information protected by section 552.117 and may not be withheld on that basis.

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. Accordingly, you must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, pursuant to section 552.130 of the Government Code.

Section 552.137 of the Government Code 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). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). Therefore, you must withhold the e-mail address you have marked, as well as the additional e-mail address we have marked, in accordance with section 552.137, unless the city receives consent for their release.

We note the submitted information contains a DD-214 form. Section 552.140 of the Government Code 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.³ *See id.* § 552.140(a), (b). We have marked the DD-214 form. However, you do not inform us when the city came into the possession of this form. Therefore, the city must withhold the DD-214 form under section 552.140 if it came into the possession of the city on or after September 1, 2003. If the form was received by the city before September 1, 2003, then the city may not withhold it pursuant to section 552.140.

Finally, we note that some of the remaining information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish

²*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

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

copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the submitted W-4 forms must be withheld under section 552.101 of the Government Code in conjunction with federal law. Except where we have marked for release, the city must withhold the information marked pursuant to section 552.117(a)(2) of the Government Code. The marked Texas motor vehicle record information must be withheld pursuant to section 552.130 of the Government Code, and the marked e-mail addresses must be withheld pursuant to section 552.137 of the Government Code, unless the city receives consent for their release. If the DD-214 form we have marked came into the possession of the city on or after September 1, 2003, the form must be withheld pursuant to section 552.140 of the Government Code. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 329626

Enc. Submitted documents

cc: Requestor
(w/o enclosures)