



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2009

Ms. Yvette Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-13086

Dear Ms. Aguilar:

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# 355512.

The City of Corpus Christi and the Corpus Christi Police Department (collectively the "city"), received two requests for information relating to a specified incident, including the personnel files for some of the police officers involved.¹ You state you have released some of the responsive information and that you have redacted social security numbers.² You state you have also redacted the home phone numbers, addresses, and family information of current and former city peace officers pursuant to Open Records Decision 670 (2001). You claim the submitted information is excepted from disclosure under sections 552.101,

¹We note that the city asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We note that 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.

552.108, 552.130, 552.137, and 552.140 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.⁴

Initially, we note that a portion of the submitted information, which we have marked, was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2009-12527 (2009). In that ruling, we determined that the city must withhold the submitted EMT records under section 773.091(b) of the Health and Safety Code except as specified by section 773.091(g), unless the city receives the required consent for release of that information. As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the city must continue to rely on this ruling as a previous determination and dispose of this information in accordance with Open Records Letter No. 2009-12527. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

In addition, you inform us that portions of the submitted information were the subject of previous requests for information in response to which this office issued Open Records Letter Nos. 2009-10420 (2009), 10472 (2009), and 10999 (2009). In those rulings, we determined the city may withhold portions of the information at issue under section 552.108(a)(1). However, you also inform us that the criminal case at issue is no longer pending, thus section 552.108(a)(1) is no longer applicable to the submitted information. Accordingly, the city may not rely on Open Records Letter Nos. 2009-10420, 10472, and 10999 as previous determinations under section 552.108 for the information at issue, and we will address your arguments for this information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The submitted information contains an I-9 form (Employment Eligibility Verification), which is governed by section 1324a of title 8 of the United States Code. This section provides that

³We note that you did not raise section 552.140 as an exception to disclosure within ten business days of the date the city received the request. *See* Gov't Code § § 552.301(b), .302. However, because section 552.140 is a mandatory exception that can provide a compelling reason to withhold information from disclosure, we will consider your claim under section 552.140. *See id*; *see also* Open Records Decision Nos. 150 at 2 (1977), 319 (1982). We further note the city is no longer asserting the remaining exceptions to disclosure it raised in its earlier correspondence to our office.

⁴To the extent any portion of the information you have submitted is a representative sample, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

an I-9 form and “any information contained in or appended to such form, 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 form in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we agree the I-9 form you have marked is confidential pursuant to section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. 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 Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of . . . income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . or offense[.]” 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, we agree the city must withhold the W-4 forms you have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric information except in certain limited circumstances. *See id.* §§ 560.001 (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). In this instance, the information subject to section 560.003 is that of a deceased individual. Sections 560.001, 560.002, and 560.003 are intended to protect an individual’s privacy. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). The right to privacy is personal and lapses at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ *ref’d n.r.e.*); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Therefore, the city may not withhold the information you have

marked under section 552.101 of the Government Code on the basis of section 560.003 of the Government Code.

You assert that portions of the information at issue are protected by common-law privacy. 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. *See 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. *See id.* at 681-82.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has also found that common-law privacy applies to the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983). Upon review, we find the information we have marked constitutes information that is intimate or embarrassing and of no legitimate public concern. Thus, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* You state the information you have marked pertains to a closed investigation that did not result in conviction or deferred adjudication. You further inform us, and provide documentation showing, that the officer in this case was not billed by the grand jury on June 25, 2009. Based on your representations and our review, we conclude that section 552.108(a)(2) is applicable to the information you have marked. Therefore, the city may withhold the information it has marked under section 552.108(a)(2) of the Government Code.

You have marked Texas motor vehicle record information subject to section 552.130 of the Government Code. This section excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). The city must withhold the

information it has marked that relates to a Texas motor vehicle license, title, or registration pursuant to section 552.130.

You raise section 552.137 of the Government Code for portions of the remaining information. Section 552.137 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* Gov't Code § 552.137(a), (b). The e-mail addresses you have marked in the remaining information are not of a type specifically excluded by section 552.137(c). *See* Act of May 15, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 651, 651-52, *amended by* Act of May 27, 2009, 81st Leg., R.S., ch. 962, § 7, 2009 Tex. Sess. Law Serv. 2555, 2557 (Vernon) (to be codified as an amendment to Gov't Code § 552.137(c)). Therefore, the city must withhold the e-mail addresses you have marked in accordance with section 552.137, unless the city receives consent for their release.

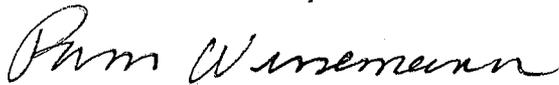
You contend that a portion of the information at issue consists of DD-214 forms subject to section 552.140 of the Government Code. Section 552.140 provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession 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. *See id.* § 552.140(a), (b). To the extent the city first came into possession of the DD-214 forms on or after September 1, 2003, the city must withhold the DD-214 forms you have marked pursuant to section 552.140. If the city came into possession of any the forms at issue before September 1, 2003, the city may not withhold that form under section 552.140.

In summary, the city must continue to rely on Open Records Letter No. 2009-12527 (2009) and withhold or release the marked information in accordance with that ruling. The city must withhold the marked information under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and section 6103(a) of title 26 of the United States Code. The city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information it has marked under section 552.108(a)(2) of the Government Code. The city must withhold the information you have marked under section 552.130 of the Government Code. The city must withhold the e-mail addresses you have marked under section 552.137, unless the city receives consent for their release. The city must withhold the marked DD-214 forms under section 552.140 of the Government Code to the extent the city came into possession of the forms after September 1, 2003. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 355512

Enc. Submitted documents

c: Requestor
(w/o enclosures)