



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2009

Mr. Randall C. Stump
Stump & Stump
Attorney for City of Florence
803 Main Street
Georgetown, Texas 78626

OR2009-16480

Dear Mr. Stump:

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# 362148.

The City of Florence (the "city"), which you represent, received a request for the personnel file of a named city police officer. You state you will release some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.119, 552.130, 552.140, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold a submitted college transcript as an education record under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, which governs the availability of education records held by educational institutions or agencies receiving federal funds. These provisions only apply to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. 34 C.F.R. § 99.33(a)(2). In this instance, the city maintains the transcript at issue. The city is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth is not an "educational agency" within FERPA). You do not assert, nor does it appear from our review, that the city received the transcript directly from the educational institution at issue. Therefore, FERPA does not apply to the submitted transcript, and the city may not withhold it on that ground.

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 exception encompasses information that is made confidential by other statutes, such as section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the TCLEOSE. Section 1701.454 provides as follows:

(a) A report or statement submitted to the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this section, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the [TCLEOSE] employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the [TCLEOSE] that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. The submitted information includes an F-5 Report of Separation of License Holder form. You state the named officer did not resign due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

The remaining information includes a W-4 form, which is excepted from disclosure under section 6103(a) of title 26 of the United States Code. Section 552.101 of the Government Code also encompasses section 6103(a). Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his 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 with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . , or offense[.]” See 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). Consequently, the city must withhold the submitted W-4 form pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

You raise section 552.117 for portions of the remaining information. Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information pertaining to a peace officer, regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) only applies to records that a governmental body is holding in an employment capacity. We note that section 552.117(a)(2) of the Government Code is applicable to a peace officer’s cellular telephone number only if the cellular telephone service is paid for by the officer with his or her own funds. See Open Records Decision No. 670 at 6 (2001). You state the named officer is a licensed peace officer as defined by article 2.12 of the Texas Code of Criminal Procedure. You also state this officer pays for his cellular telephone service with his own funds. Therefore, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. You inform us the remaining information includes the cellular telephone numbers of licensed peace officers who pay for their cellular telephone service with their own funds. However, you do not state these licensed peace officers are current or former city officers. Thus, to the extent the licensed peace officers are former or current employees of the city, the city must withhold the cellular telephone numbers we have marked under section 552.117(a)(2) of the Government Code. See Open Records Decision No. 670 (2001) (determining that a governmental body may withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision). To the extent the licensed peace officers are not current or former employees of the city, the city may not withhold the marked cellular telephone numbers under section 552.117(a)(2) of the Government Code.¹

¹As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

However, the cellular telephone numbers of those licensed peace officers who are not current or former employees of the city may be subject to section 552.1175 of the Government Code.² Section 552.1175 of the Government Code provides, in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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.

Gov't Code § 552.1175(b). If the licensed peace officers are not current or former employees of the city, the city must withhold the marked cellular telephone numbers if those licensed peace officers elect to restrict access to their information in accordance with section 552.1175(b). If no election is made, the city may not withhold those officers' cellular telephone numbers under section 552.1175.

You assert some of the remaining information is excepted from public disclosure under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.³

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). You state the city first came into possession of the submitted DD-214 form on or after September 1, 2003. Thus, we conclude the city must withhold the submitted DD-214 form under section 552.140 of the Government Code.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³As our ruling is dispositive, we need not address your argument to withhold a portion of this information under section 552.119 of the Government Code.

In summary, the city must withhold the submitted F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the submitted W-4 form under to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the marked information of the named officer under section 552.117(a)(2) of the Government Code. To the extent the other licensed peace officers are former or current employees of the city, the city must withhold the cellular telephone numbers we have marked under section 552.117(a)(2) of the Government Code. To the extent the licensed peace officers are not employed by the city, the city must withhold the marked cellular telephone numbers if those officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the submitted DD-214 form under section 552.140 of the Government Code. 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 362148

Enc. Submitted documents

cc: Requestor
(w/o enclosures)