



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2010

Ms. Cara Leahy White
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OR2010-02199

Dear Ms. White:

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# 370081.

The City of Ovilla (the "city"), which you represent, received a request for the personnel file of a named officer. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.119, 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 section 6103(a) of title 26 of the United States Code. 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, interest, fine, forfeiture, or other imposition, 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 forms 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 section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 "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 submitted I-9 forms and attached social security card and driver's license under the Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we find the submitted I-9 form and attached social security card and Texas driver's license are confidential under section 552.101 of the Government Code, and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The submitted information also contains L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides the following:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

- (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
- (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Thus, we determine that the city must withhold the submitted L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 also encompasses section 1701.454 of the Occupations Code. Section 1701.454 governs the public availability of an F-5 form ("Report of Separation of Licensee") submitted to the TCLEOSE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) A report or statement submitted to [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 subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. In this instance, it does not appear that the named officer resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We, therefore, conclude that the city must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. We also understand you to assert that the submitted L-1 Report of Appointment/License Application form is also confidential under section 1701.454. However, L-1 forms are not reports required to be filed with TCLEOSE under subchapter J of chapter 1701. Accordingly, the submitted L-1 form is not confidential under section 1701.454, and the city may not withhold it under section 552.101 on that ground.

You assert that some of the remaining information contains confidential criminal history record information ("CHRI"). Section 552.101 also encompasses CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. We note that the term CHRI does not include driving record information. *See* Gov't Code § 411.082(2)(B). Upon review, we find that the information we have marked consists of CHRI for the purposes of chapter 411. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, no portion of the remaining information consists of CHRI for the purposes of chapter 411. Accordingly, the city may not withhold any of this information under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, while section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]"

Id. § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Indus. Found.*, 540 S.W.2d at 683-85. Accordingly, we will consider your privacy claims under sections 552.101 and 552.102(a) together.

In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. This office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Prior decisions of this office have also found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. See Open Records Decision Nos. 545, 523 (1989). The information we have marked constitutes personal financial information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code on the basis of 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. 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.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the information you have marked relates to criminal investigations that concluded in a result other than conviction or deferred adjudication. Based on your representation and our review, we conclude that section 552.108(a)(2) is applicable to the information you have marked.

However, section 552.108 of the Government Code does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co.*

v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the city may withhold the information you have marked under section 552.108(a)(2) of the Government Code.¹

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). In this case, it is unclear whether the individuals whose personal information we have marked are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individuals at issue are licensed peace officers as defined by article 2.12, the city must withhold the personal information we have marked in the submitted documents under section 552.117(a)(2) of the Government Code.

If the individuals at issue are not licensed peace officers, then their 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. Gov't Code § 552.117(a)(1). 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 individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individuals at issue are not licensed peace officers and timely elected to keep personal information confidential, the city must withhold the information we have marked under section 552.117(a)(1). Otherwise, this information may not be withheld under section 552.117.²

Next, we note a portion of the remaining information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 provides in part:

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

²Regardless 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.

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).

(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). The submitted information includes the home address and home telephone number of police officers who are not city employees. To the extent these individuals are currently licensed peace officers who elect to restrict public access to their personal information, the city must withhold the information we have marked under section 552.1175. To the extent any of these individuals are not currently licensed peace officers who elect to restrict public access to their personal information, the city may not withhold the information we have marked pertaining to that individual under section 552.1175.

You assert that the officer's photographs should be withheld from disclosure under section 552.119 of the Government Code, which provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. Upon review, we find that the city has failed to demonstrate that release of the photographs would endanger the officer's life or physical safety. Accordingly,

the photographs at issue may not be withheld under section 552.119 of the Government Code.

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.” *Id.* § 552.130(a)(1), (2). Accordingly, the city must withhold the driver’s license information we have marked under 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). We have marked e-mail addresses that do not appear to be of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the city has received consent for their release.

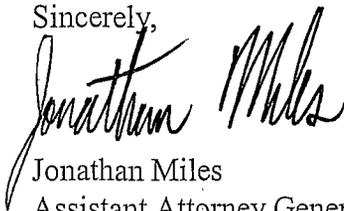
In summary, the city must withhold the following information under section 552.101 of the Government Code: 1) the submitted W-4 forms in conjunction with section 6103(a) of title 26 of the United States Code, 2) the submitted L-2 and L-3 declaration forms in conjunction with section 1701.306 of the Occupations Code, 4) the submitted F-5 form in conjunction with section 1701.454 of the Occupations Code, 5) the CHRI we have marked in conjunction with section 411.083 of the Government Code, and 6) the information we have marked under common-law privacy. The I-9 form you have marked and the attached social security card and Texas driver’s license, are confidential under section 552.101 of the Government Code, and may only be released in compliance with the federal laws and regulations governing the employment verification system. With the exception of basic information, the police reports you have marked may be withheld under section 552.108(a)(2) of the Government Code. The city must withhold the personal information we have marked and indicated under section 552.117(a)(2), to the extent the individuals whose information is at issue are licensed peace officers. If the individuals whose information is at issue are not licensed peace officers, the city must withhold the personal information we have marked under section 552.117(a)(1), if the individuals whose information is at issue timely elected to keep personal information confidential. The city must withhold the information we have marked under section 552.1175 to the extent the individuals to which the information pertains are currently licensed peace officers who elect to restrict public access to their personal information. The city must withhold the driver’s license information we have marked under section 552.130 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137. The remaining information must be released.⁴

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including I-9 forms under section 552.101 of the Government Code in conjunction with 8 U.S.C. § 1324a, W-4 forms under section

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 370081

Enc. Submitted documents

c: Requestor
(w/o enclosures)

552.101 of the Government Code in conjunction with 26 U.S.C. § 6103(a), L-2 and L-3 declarations section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, a copy of a Texas driver's license and Texas driver's license and license plate numbers under section 552.130 of the Government Code, and e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.