



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2010

Ms. Julia Gannaway  
Lynn, Pham & Ross, LLP  
306 West Broadway Avenue  
Fort Worth, Texas 76104

OR2010-03600

Dear Ms. Gannaway:

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# 372641.

The City of Lockhart (the "city") received a request for employment information pertaining to a former city police officer. You state that the city is releasing some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

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. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for the documents in Exhibit B. Chapter 143 of the Local Government Code applies to civil service municipalities that have voted to adopt the chapter. Local Gov't Code § 143.002(a)(1)(c). Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that a city's civil service director is required to maintain, and an internal file that the police department may maintain for its own use. *Id.* § 143.089(a), (g). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

---

<sup>1</sup>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.

You state that the personnel records in Exhibit B consist of an internal file maintained by the city's police department. You inform us that the former officer was not employed by the city at the time of the city's adoption of chapter 143 of the Local Government Code, and you ask whether section 143.089(g) applies to Exhibit B. We note that section 143.089 only applies to police officers as defined by chapter 143. Chapter 143 defines "police officer" as a member of a police department or other peace officer who was appointed in substantial compliance with chapter 143 or who is entitled to civil service status under section 143.005, section 143.084, or section 143.103. Local Gov't Code § 143.003(5); *see also id.* §§ 143.005 (police officer serving in municipality that adopts chapter 143 and who has been in service of municipality for more than six months at time of adoption and who is entitled to civil service classification has status of civil service employee), .084 (pertaining to civil service status for certain temporary employees), .103 (pertaining to peace officers employed in specialized police divisions). In *Jackson v. City of Houston*, 595 S.W.2d 907 (Tex.Civ. App—Houston [14th Dist.] 1980, writ ref'd n.r.e), the court ruled that the civil service statute by its terms applies only to members of a police department who fit the qualifications of having been appointed by the process designated under chapter 143. *Id.* at 908.

In this instance, the former officer at issue was not appointed to the city's police department in substantial compliance with chapter 143. Furthermore, he was not entitled to civil service status under section 143.005, section 143.084, or section 143.103. Therefore, he does not meet the definition of a "police officer" for purposes of this chapter. Accordingly, we find that section 143.089(g) does not apply to the former officer's personnel records. Thus, the city may not withhold Exhibit B under section 552.101 of the Government Code on that basis.

Next, you claim that the documents you have submitted in Exhibit C are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 217.7 of the Administrative Code. Section 217.7 states that before hiring or appointing a licensee, an agency shall contact the Texas Commission on Law Enforcement Officers Standards and Education ("TCLEOSE"), electronically or in writing, to comply with the reporting requirements of Texas Occupations Code section 1701.451, and that a report or statement submitted under section 217.7 is exempt from disclosure under the Act. *See Occ. Code* § 1701.451 (requirements of preemployment request for early termination report and background check confirmation form); *see also* 37 Tex. Admin. Code § 217.7(a), (h). However, Exhibit C consists of a F-5 Report of Separation of License Holder form, three F-6 Report of Training forms, and a L-1 form. These forms do not consist of a report or statement that must be submitted to the commission in order to comply with the reporting requirements of section 1701.451 of the Occupations Code. Therefore, section 217.7 is not applicable to this information, and it may not be withheld under section 552.101 on that basis.

We note, however, that the F-5 form in Exhibit C is subject to section 1701.454 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code and 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 commission 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. Section 1701.454 applies to F-5 forms required to be filed with TCLEOSE under subchapter J of chapter 1701. In this instance, the F-5 form in Exhibit C indicates the officer was terminated for "a violation of the law other or department policy or for other substantiated misconduct," but does not indicate the specific reason for termination. Accordingly, we must rule conditionally. If the officer at issue was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, the F-5 form in Exhibit C may not be withheld under section 552.101 of the Government Code in conjunction with 1701.454 of the Occupations Code. If, however, the officer at issue was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, then the city must withhold the submitted F-5 form in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Next, you claim that some of the remaining information is confidential pursuant to the doctrine of common-law privacy, which is also encompassed by section 552.101 of the Government Code. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) 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. *Id.* at 681-82. You seek to withhold the names and identifying information of witnesses in an internal investigation into

misconduct by the former police officer under common-law privacy. We note that names and identifying information of individuals are not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy). Accordingly, the city may not withhold the information you have marked, or the corresponding information in the submitted audiotape, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.<sup>2</sup> Gov't Code § 552.117(a)(2). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, the remaining information contains personal information concerning a former city police officer who is no longer employed by the city, and it is unclear whether this person is currently a licensed peace officer as defined by article 2.12. Accordingly, if the former city police officer is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information we have marked, and the corresponding information in the submitted audiotape recording, pursuant to section 552.117(a)(2) of the Government Code. If the city lacks the technical capability to redact the information subject to section 552.117(a)(2) in the submitted audiotape recording, the city must withhold the audiotape recording in its entirety.

If the former employee is no longer a licensed peace officer, then the personal information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the former city police officer timely requested

---

<sup>2</sup>Although you raise section 552.1175 for the home address, telephone numbers, social security number, and family member information of the former city police officer, we note that section 552.117 is the proper exception in this instance because the city holds this information in an employment capacity. Accordingly, we will address your arguments for this information under section 552.117, not section 552.1175.

confidentiality under section 552.024, the city must withhold the information we have marked, and the corresponding information in the submitted audiotape recording, under section 552.117(a)(1). If the city lacks the technical capability to redact the information subject to section 552.117(a)(1) in the submitted audiotape recording, the city must withhold the audiotape recording in its entirety.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state.<sup>3</sup> See Gov't Code § 552.130(a)(1). The city must withhold the Texas driver's license information that we have marked under section 552.130.

Exhibit D consists of military discharge record for which you raise section 552.140 of the Government Code. Section 552.140 provides in part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 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.

*Id.* § 552.140(a). Section 552.140 provides 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 do not inform us when the city came into possession of the submitted DD-214 form. Therefore, if the submitted DD-214 form came into the possession of the city on or after September 1, 2003, the city must withhold this form in its entirety under section 552.140. Conversely, if the city received the form before September 1, 2003, the city may not withhold the form pursuant to section 552.140.

In summary, if the officer at issue was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, then the city must withhold the submitted F-5 form in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. If the former employee is currently a licensed peace officer as defined by article 2.12, then the city must withhold the information we have marked, and the corresponding information in the submitted audiotape recording, pursuant to section 552.117(a)(2) of the Government Code. If the former employee is no longer a licensed peace officer the city must withhold the information we have marked, and the corresponding information in the submitted audiotape recording,

---

<sup>3</sup>The 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).

under section 552.117(a)(1) of the Government Code, if the former employee timely requested confidentiality under section 552.024 of the Government Code. If the city lacks the technical capability to redact the information subject to section 552.117 of the Government Code in the submitted audiotape recording, the city must withhold the audiotape recording in its entirety. The city must withhold the Texas driver's license information that we have marked under section 552.130. If the city came into the possession of the submitted military discharge form in Exhibit D on or after September 1, 2003, it must be withheld under section 552.140 of the Government Code. The remaining information must be released.<sup>4</sup>

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](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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 372641

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>4</sup>We 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 Texas drivers license numbers under section 552.130 of the Government Code and military discharge records that are first recorded or first come into the possession of a governmental body on or after September 1, 2003 under section 552.140, without the necessity of requesting an attorney general decision.