



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2010

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2010-03989

Dear Mr. Griffith:

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# 373483.

The Town of Flower Mound (the "town"), which you represent, received a request for the employment application, background investigation report, polygraph, psychological examination results, and background investigation notes pertaining to a named individual. You state the town has released some information to the requestor. You claim the remaining responsive information is excepted from disclosure under sections 552.101, 552.117, 552.119, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the town's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples thereof. *See Gov't Code § 552.301(e)(1)(D)*. Although you submitted most of the information responsive to the request, you did not submit the videotape you state is responsive. Because the town did not submit this responsive information within the deadline found in section 552.301, we conclude the town failed to comply with the procedural requirements mandated by the Act with respect to the videotape.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You raise section 552.119 of the Government Code, which can provide a compelling reason to withhold information, for the responsive videotape. However, because you have not submitted the videotape for our review, we have no basis for finding it confidential by law. We therefore conclude the town must release the responsive videotape to the requestor pursuant to section 552.302. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

We next turn to your claimed exceptions to disclosure of the submitted information. You first raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by statutes, such as criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. 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 Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We marked the submitted criminal history printouts that reflect they were generated by the NCIC or the TCIC. We conclude this information is confidential CHRI the town must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. Because you do not inform this

office the remaining criminal history printout was generated by NCIC or TCIC, it is not confidential under chapter 411 and may not be withheld on that basis.

You next raise section 552.117(a)(2) of the Government Code, which 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, regardless of whether the officer complies with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(2). However, section 552.117(a)(2) generally does not apply to applicants for employment. *See* Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). The individual whose information is at issue was an applicant for employment with the town who, the information reflects, was denied employment as a peace officer. Thus, because this individual is not a town employee, we determine section 552.117 is inapplicable to the named applicant's personal information in this instance, and it may not be withheld on that basis.

However, if the job applicant is a licensed peace officer, his personal information may be excepted from disclosure pursuant to section 552.1175 of the Government Code.¹ Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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.

Id. § 552.1175(a)(1), (b). The information does not reflect whether this individual is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Procedure. Therefore, to the extent the individual at issue is a licensed peace officer who elects to restrict access to his personal information in accordance with section 552.1175(b), the town must withhold the personal information we have marked in the submitted documents under section 552.1175 of the Government Code. If this individual is not a licensed peace officer for purposes of article 2.12 or does not elect to restrict access to the marked information, this information may not be withheld under section 552.1175. However, in such case, we note 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. *See id.* § 552.147.

You also raise section 552.119 of the Government Code, which provides:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, 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 civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

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

Id. § 552.119. By its terms, section 552.119 only applies to photographs of licensed peace officers as defined by article 2.12. *Id.* § 552.119(a). As noted above, we are unable to determine whether the named applicant is currently a licensed peace officer. If the named individual is not a licensed peace officer as defined by article 2.12, section 552.119 is inapplicable to his photograph. However, even if this individual is a licensed peace officer, to demonstrate the applicability of section 552.119, a governmental body must demonstrate that release of the photograph would endanger the life or physical safety of the officer. In this instance, you have not explained how release of the submitted photograph would endanger the individual's life or physical safety. Accordingly, we determine that the town has failed to demonstrate the applicability of section 552.119 to the submitted photograph. As you have raised no other exceptions to disclosure of the photograph, it must be released.

You also raise section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor

vehicle title, or registration issued by a Texas agency. *Id.* § 552.130(a)(1), (2). The town must withhold the Texas driver's license information and vehicle identification numbers we marked in the remaining information under section 552.130 of the Government Code.

A portion of the submitted information is subject to section 552.136 of the Government Code. Section 552.136(b) states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are "access device" numbers for purposes of section 552.136. Therefore, the town must withhold the insurance policy number we marked under section 552.136 of the Government Code.

The submitted information contains personal e-mail addresses that are subject to section 552.137 of the Government Code. 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 id.* § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). Accordingly, the town must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

Finally, 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. *See id.* § 552.140(a), (b). The submitted DD-214 form reflects it came into the possession of the town after September 1, 2003. Accordingly, this form must be withheld in its entirety under section 552.140.

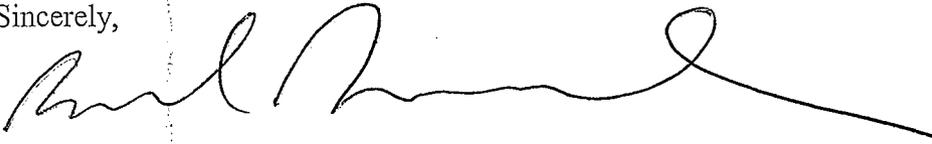
In summary, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. If the individual whose information at issue is a licensed peace officer who elects to restrict access to his personal information in accordance with section 552.1175(b), the town must withhold the personal information we have marked in the submitted documents under section 552.1175 of the Government Code. If the individual is not a police officer or does not elect to restrict access to the marked information, the town may withhold the marked social security number under section 552.147 of the Government Code. The town must also withhold: (1) the Texas driver's license information and vehicle identification numbers we marked under section 552.130 of the Government Code; (2) the insurance policy number we marked under section 552.136 of the Government Code; (3) the personal e-mail addresses

we marked under section 552.137 of the Government Code unless the owners of the e-mail addresses affirmatively consent to their disclosure; and (4) the DD-214 form under section 552.140 of the Government Code. The remaining information must be released.²

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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 373483

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We 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 driver's license numbers and copies of Texas driver's licenses under section 552.130 of the Government Code; insurance policy numbers under section 552.136 of the Government Code; private e-mail addresses under section 552.137; and military discharge records under section 552.140, without the necessity of requesting an attorney general decision.