



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 16, 2010

Mr. Mark T. Sokolow  
City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2010-05476

Dear Mr. Sokolow:

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# 377601.

The City of Georgetown (the "city") received a request for information pertaining to an individual who applied for the city's Chief of Police position. You state that you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.102, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). This office has previously determined that section 552.102 only protects information in a personnel file of an employee of a governmental body, and not information relating to an applicant for employment with the governmental body. Open Records Decision No. 455 at 8 (1987). In this instance, the submitted information pertains to an applicant for the city's Police Chief position. Accordingly, section 552.102 is not applicable to this information. However, you claim the submitted documents contain personal and private information. Therefore, we will address whether any of the submitted information is confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy.

Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Inclus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that information pertaining to the qualifications of an applicant for public employment is generally of legitimate public interest. See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 455 at 9 (employment history and salary information in employment applications not subject to privacy).

The information you seek to withhold consists of information pertaining to an applicant of the city. Upon review, we find you have failed to explain how any portion of the submitted information constitutes highly intimate or embarrassing information that is not of legitimate public interest. Thus, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, you raise section 552.117 of the Government Code for the submitted information. 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, 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 ORD 455 at 7 (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). In this instance, the individual whose information is at issue was an applicant for employment with the city, and you do not indicate, nor does the submitted information reflect, that the individual was employed or hired by the city. Accordingly, because the individual at issue is not a city employee, we determine section 552.117 of the Government Code is inapplicable to the named applicant's personal information, and none of it may be withheld on that basis.

We note, however, that if the individual at issue is a licensed peace officer, then portions of the submitted information may be subject to section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 provides in relevant part:

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<sup>1</sup> The Office of the Attorney General will raise mandatory exceptions 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 may include the personal information of a currently licensed peace officer who is not a city employee. Thus, to the extent the named individual at issue is currently licensed peace officer who elects to restrict public access to his personal information, the city must withhold the information we have marked under section 552.1175. To the extent the individual is not a currently licensed peace officer who elects to restrict public access to his personal information, the city may not withhold the information we have marked under section 552.1175.

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). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked in the submitted information are not a type specifically excluded by section 552.137(c). Thus, the city must withhold these e-mail addresses under section 552.137 of the Government Code, unless their owner has affirmatively consented to their disclosure.

We note the remaining information contains information that is subject to section 552.130 of the Government Code. Section 552.130 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." Gov't Code § 552.130. Accordingly, the city must withhold the information we have marked under section 552.130 of the Government Code.<sup>2</sup>

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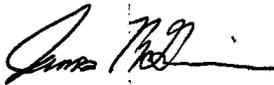
<sup>2</sup> We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including certain Texas motor vehicle information under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, 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 city must withhold the personal information we have marked in the submitted documents under section 552.1175 of the Government Code. The city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 377601

Enc. Submitted documents

c: Requestor  
(w/o enclosures)