



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 19, 2010

Mr. U.H. Specht  
Legal Advisor  
City of Carrollton  
2025 Jackson Road  
Carrollton, Texas 75006-1739

OR2010-05539

Dear Mr. Specht:

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# 377026.

The City of Carrollton (the "city") received a request for the personnel file of a named former police officer. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 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 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(a) is the same as the common-law privacy test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d

668 (Tex. 1976). Accordingly, we will consider your privacy claims under sections 552.101 and 552.102(a) together.

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. See 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered intimate or 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 personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. See Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of public employee's resignation or termination), 423 at 2 (1984) (explaining that because of greater legitimate public interest in disclosure of information regarding public employees, employee privacy under section 552.102 is confined to information that reveals "intimate details of a highly personal nature").

You assert the requested information should not be released because the named officer is no longer employed with the city and "the release of the enclosed documents would be a clearly unwarranted invasion of his personal privacy." You also provide an e-mail from the former officer stating he opposes release of the requested information. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The city has failed to demonstrate, however, that the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy or section 552.102 of the Government Code.

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which provides in relevant part:<sup>1</sup>

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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).

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] 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 the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Section 1701.306 specifically applies to the information contained in an L-2 Declaration of Medical Condition form and an L-3 Declaration of Psychological and Emotional Health form. The submitted information includes an L-2 declaration form and an L-3 declaration form. Therefore, the city must withhold these L-2 and L-3 declaration forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints and records of hand geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). The remaining information includes the former officer's fingerprints. You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprints in this instance. Therefore, the city must withhold the fingerprints, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

We note a portion of the remaining information may be subject to section 552.117 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 this information be kept confidential under section 552.024 of the Government Code. *See id.* §§ 552.117(a)(1), .024. Whether a particular piece of information is protected by section 552.117 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) on behalf of a former or current employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. We have marked information that may be subject to section 552.117. You do not indicate whether the former officer at issue elected to keep his personal information confidential prior to the city receiving the instant request for information. We must therefore rule conditionally. If the former officer whose personal information is at issue timely elected to withhold such information under section 552.024, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. If the former officer did not timely elect confidentiality, the city may not withhold the marked information under section 552.117(a)(1), and this information must be released.<sup>2</sup>

We further note that some of the remaining information may fall under section 552.1175 of the Government Code. Section 552.1175 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). The submitted information includes addresses and home telephone numbers of peace officers who are not city employees. To the extent these individuals are currently licensed peace officers who elect with the city to restrict public access to their personal information, the city must withhold their addresses and home telephone numbers, which we have marked, under section 552.1175. To the extent these individuals are not currently licensed peace officers who elect with the city to restrict public

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<sup>2</sup>Regardless 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. Gov't Code § 552.147(b).

access to their personal information, the city may not withhold information pertaining to these individuals under section 552.1175.

We also note the remaining information contains Texas driver's license information. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle record issued by an agency of this state. *See id.* § 552.130(a)(1). Therefore, the city must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

Finally, we note the remaining information contains an insurance policy number. Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of this chapter, 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. This office has concluded that insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the L-2 and L-3 declaration forms we have marked under section 552.101 in conjunction with section 1701.306 of the Occupations Code. The city must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The city must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the former officer whose personal information is at issue timely elected to withhold such information under section 552.024 of the Government Code. The city must withhold the addresses and home telephone numbers of the individuals we have marked under section 552.1175 of the Government Code to the extent these individuals are currently licensed peace officers who elect with the city to restrict public access to their personal information. The city must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code. The city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.<sup>3</sup> The remaining information must be released.

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<sup>3</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 a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, a Texas driver's license number under section 552.130 of the Government Code, and an insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 377026

Enc. Submitted documents

c: Requestor  
(w/o enclosures)