



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2010

Ms. Erin K. Stewart
Assistant General Counsel
University of North Texas System
1901 Main Street, Suite 216
Denton, Texas 75201-5222

OR2010-05655

Dear Ms. Stewart:

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# 381715 (UNT PIR No. 10-116).

The University of North Texas Police Department (the "department") received a request for personnel documents related to a former department employee. You state that some responsive information has been released to the requestor. You claim that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. Section 552.101 encompasses section 1701.454 of the Occupations Code.

¹We 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.

²The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 department 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.

Section 552.117(a)(2) of the Government Code 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). In this case, it is unclear whether the individual whose personal information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individual at issue is a licensed peace officer as defined by article 2.12, the department must withhold the personal information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code.

If the individual at issue is not a licensed peace officer, then the 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 department may only withhold information under section 552.117(a)(1) if the individual 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 is not a licensed peace officer and timely elected to keep personal information confidential, the department must withhold

the marked information under section 552.117(a)(1). Otherwise, this information may not be withheld under section 552.117.³

Finally, we note that you have marked an e-mail address in the remaining submitted information. 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). The marked e-mail address does not appear to be of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the department must withhold the marked e-mail address under section 552.137 of the Government Code, unless the department has received consent for its release.⁴

In summary, the department 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. The department must withhold the personal information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code, to the extent the individual whose information is at issue is a licensed peace officer. If the individual whose information is at issue is not a licensed peace officer, the department must withhold the marked personal information under section 552.117(a)(1), provided that the individual whose information is at issue timely elected to keep personal information confidential. The department must withhold the marked e-mail address under section 552.137 of the Government Code, unless the department has received consent for its release. The remaining submitted 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, 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

³Regardless 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.

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 e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 "Cindy Nettles". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 381715

Enc. Submitted documents

c: Requestor
(w/o enclosures)