



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 19, 2010

Ms. Martha T. Williams
Olson & Olson, L.L.P.
For City of Rosenberg
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2010-07208

Dear Ms. Williams:

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# 380210.

The City of Rosenberg (the "city"), which you represent, received a request for "all disciplinary records for" two named city police officers. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that a portion of one of the submitted video recordings is not responsive to the instant request because it does not relate to the specified disciplinary records. This decision does not address the public availability of the non-responsive information, and that information need not be released.

We next note that the city did not submit disciplinary records for one of the named officers. We assume the city has released this information to the requestor. If it has not, it must do so at this time to the extent that such information exists. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental

body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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. This exception encompasses information other statutes make confidential. Section 552.101 encompasses section 1703.306 of the Occupations Code, which provides “[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]” Occ. Code § 1703.306(a). The information we have marked in the submitted documents and indicated in the submitted recordings consists of confidential polygraph information. It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306 (a). Accordingly, the city must withhold the polygraph information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.¹

Section 552.101 also encompasses 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) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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.

Upon review, we find that some of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information we have marked, as well as the corresponding information in the submitted recordings, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You claim portions of the remaining information are protected under section 552.117 of the Government Code.² Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of

¹As we make this determination, we do not address your argument that the polygraph information is private.

²Although the city raises section 552.117(a)(1), we note that section 552.117(a)(2) applies to peace officers; we therefore address the city’s claims under section 552.117(a)(2).

whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). Accordingly, the information we have marked must be withheld under section 552.117(a)(2) of the Government Code.

We note that portions of the remaining information are subject to section 552.130 of the Government Code.⁴ Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Upon review of the information at issue, we determine that the city must withhold the Texas driver's license numbers we have marked in the submitted documents and the license plate numbers we have indicated in the submitted recordings under section 552.130 of the Government Code.⁵

In summary, we have marked and indicated the information that must be withheld pursuant to section 552.101 of the Government Code in conjunction with (1) section 1703.306 of the Occupations Code and (2) common-law privacy. The city must withhold the information we have marked and indicated under section 552.130 of the Government Code. The remaining information must be released to the requestor.⁶ We note that if the city lacks the technical capability to redact the information we have indicated in the recordings at issue, the city must withhold the recordings in their entirety. *See* Open Records Decision No. 364 (1983).

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_or1.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

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁶We note that the information being released contains a social security number. 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.

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 "C. Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 380210

Enc. Submitted documents

c: Requestor
(w/o enclosures)