



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2010

Ms. Jameene Yvonne Banks  
Attorney for City of Live Oak  
Denton, Navarro, Roach & Bernal  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2010-09255

Dear Ms. Banks:

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# 384014.

The Live Oak Police Department (the "department"), which you represent, received four requests from the same requestor for information pertaining to four named department officers, including information pertaining to persons arrested by those officers and training records for the officer in charge of standard field sobriety testing. You state you have redacted some information pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009).<sup>1</sup> You also state you will release some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.114, 552.117, and

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<sup>1</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 Texas driver's license and license plate numbers under section 552.130 of the Government Code, credit card numbers, insurance policy numbers, and bank account numbers under section 552.136 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

552.147 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excludes from his requests the officers' home addresses, social security numbers, telephone numbers, and personal family member information, as well as any officer photographs. Thus, such information is not responsive to the present requests for information. The department need not release non-responsive information in response to these requests, and this ruling will not address that 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 information other statutes make confidential, such as section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.<sup>3</sup> *Id.* The requestor has not provided the department with two of the three pieces of information; thus, the department must withhold the accident report forms, which we have marked, under section 550.065(b) of the Transportation Code.

You claim portions of the remaining information are confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy and under section 552.102 of the Government Code. Section 552.101 also encompasses the doctrine of common-law privacy. Section 552.102(a) 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). Section 552.102(a) 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). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). We will, therefore, consider the applicability of

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<sup>2</sup>Although you also raise section 552.1175 for the home address, telephone number, social security number, and family member information of the department police officers, we note section 552.117 is the proper exception in this instance because the department holds this information in an employment capacity. Accordingly, we will consider your arguments for this information under only section 552.117.

<sup>3</sup>Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

common-law privacy under section 552.101 together with your claim regarding section 552.102.

Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See Open Records Decision Nos. 600* (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See Open Records Decisions Nos. 562 at 10* (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find that no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Consequently, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy or under section 552.102(a) of the Government Code.

Section 552.114 of the Government Code excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). The federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, governs the availability of student records held by educational institutions or agencies receiving federal funds. These provisions only apply to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. 34 C.F.R. § 99.33(a)(2). Although the submitted information includes educational records, these records are maintained by the department, which is not an educational institution. You do not inform us the department received the submitted records from the educational institution that created them. Therefore, we find the

department may not withhold the submitted educational records on the basis of section 552.114 of the Government Code or FERPA.

We next address your argument under section 552.117 of the Government Code for the responsive information not excluded by the requestor. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, social security number, and family member information of a licensed peace officer, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>4</sup> See Gov't Code § 552.117(a)(2). We note that section 552.117 does not encompass an employee's date of birth. The responsive information you have marked consists of only the officers' dates of birth, which are not encompassed by section 552.117. Accordingly, the department may not withhold any portion of the responsive information under section 552.117(a)(2) of the Government Code.

You state you will redact the information you have marked under section 552.130 of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 684 (2009). As stated previously, Open Records Decision No. 684 authorizes the 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. In this instance, some of the information you have marked under section 552.130 consists of vehicle identification numbers, out-of-state motor vehicle record information, and the issuing state, class, and expiration date of the Texas driver's licenses. We note the department is not authorized to withhold these types of information pursuant to Open Records Decision No. 684. Additionally, we note the remaining information includes additional Texas driver's license numbers, as well as other Texas motor vehicle record information subject to section 552.130. Therefore, we will address the applicability of section 552.130 to the information at issue.<sup>5</sup> Section 552.130 of the Government Code 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). Thus, we find section 552.130 is applicable to some of the information at issue. However, we note section 552.130 does not apply to out-of-state motor vehicle record information. Further, we find the driver's license issuing state you have marked does not constitute motor vehicle record information for purposes of section 552.130. Accordingly, the department must withhold only the Texas driver's license numbers and Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

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<sup>4</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

<sup>5</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note the remaining 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 purposes 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). We have marked e-mail addresses in the remaining information that are not of a type specifically excluded by subsection (c). Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.<sup>6</sup>

In summary, the department must withhold 1) the accident report forms we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; 2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; 3) the information we have marked under section 552.130 of the Government Code; and 4) the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. 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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/tp

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<sup>6</sup>As noted previously, ORD 684 authorizes the withholding of an e-mail address of a member of the public under section 552.137 of the Government Code without the necessity of requesting an attorney general decision.

Ref: ID# 384014

Enc. Submitted documents

c: Requestor  
(w/o enclosures)