



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2010

Mr. Christopher Gregg
Gregg & Gregg
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2010-14213

Dear Mr. Gregg:

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# 394200.

The City of Webster (the "city"), which you represent, received a request for (1) the personnel records of three named police officers; (2) documents from closed cases prepared by the three named officers pertaining to arrests for minors in possession of alcohol; (3) information pertaining to a specified case, including documents and any video or audio recordings and photographs; and (4) any property and evidence inventories taken by the city's police officers during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You claim the information in Exhibits C, D, and E is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code

¹We note that although you do not raise section 552.137 of the Government Code in your brief, you have marked portions of the submitted information under this exception. Thus, we understand you to raise section 552.137.

§ 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note Exhibit C includes a citation. Because the citation has been provided to the individual who was cited, we find that release of this information will not interfere with the detection, investigation, or prosecution of crime. *See Gov't Code* § 552.108(a)(1). Therefore, the city may not withhold the citation, which we have marked, under section 552.108(a)(1). You state that the remaining information in Exhibit C, as well as the DVD in Exhibit D and the jail booking documents in Exhibit E, relate to Case No. E0023509, which you inform us is a pending criminal case. Based on this representation and our review, we conclude section 552.108(a)(1) is generally applicable to the remaining information in Exhibit C, the DVD in Exhibit D, and the documents we have marked in Exhibit E. However, you have not explained how release of the remaining jail booking documents in Exhibit E, which do not pertain to Case No. E0023509, will interfere with that case. Accordingly, we find you have not established section 552.108(a)(1) is applicable to those documents. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Gov't Code* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, the city must release basic information, even if the information does not literally appear on the front page of an offense or arrest report. *See Open Records Decision No. 127* at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of the citation and basic information, the city may withhold Exhibit C, Exhibit D, and the documents we have marked in Exhibit E under section 552.108(a)(1) of the Government Code.

You claim the remaining information in Exhibit E is excepted from disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with ongoing law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g., Open Records Decision Nos. 531* (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). To claim section 552.108(b)(1), a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *Open Records Decision No. 562* at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g., Open Records Decision Nos. 531* at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not

protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). Upon review, we find the city has failed to demonstrate that release of the remaining information in Exhibit E would interfere with law enforcement and crime prevention. We therefore conclude that none of the remaining information at issue may be withheld under section 552.108(b)(1).

Section 552.101 of the Government Code excepts from public 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 made confidential by other statutes, such as section 143.089 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). You claim the submitted personnel files and internal affairs records in Exhibit A are excepted from disclosure under section 143.089(g). However, you do not inform us that the city is a civil service city as defined under chapter 143 of the Local Government Code. The provisions of chapter 143 of the Local Government Code only apply to civil service cities. Because you have failed to demonstrate that the city is a civil service city, section 143.089 is inapplicable to the information in Exhibit A.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of his income[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Consequently, the city must withhold the W-4 forms we marked in Exhibit A under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates.

Id. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the city must withhold the CHRI we have marked in Exhibit B under section 552.101 in conjunction with chapter 411 and federal law.

We note the remaining information contains a thumbprint. Section 552.101 also encompasses section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). The city must withhold the thumbprint we have marked in Exhibit E under section 552.101 in conjunction with section 560.003 of the Government Code.

You claim the remaining information in Exhibit A is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. As previously noted, section 552.101 encompasses the doctrine of common-law privacy. 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 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 some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office also 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).

Furthermore, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, we find none of the information at issue consists of a criminal history compilation. Furthermore, we note 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").

Upon review, we find portions of the information in Exhibit A are highly intimate or embarrassing and not of legitimate public concern. You also claim portions of the information from closed cases in Exhibit B are subject to common-law privacy. We note an individual's name, home address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Accordingly, the city must withhold the information we have marked in Exhibits A and B under section 552.101 in conjunction with common-law privacy. However, the city may not

withhold any portion of the remaining information in Exhibits A or B on the basis of common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. The city must withhold the information we have marked in Exhibit A under section 552.117(a)(2).²

We note section 552.1175 of the Government Code may apply to a portion of the remaining information in Exhibit A.³ 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). To the extent the information we have marked in Exhibit A relates to a peace officer of another governmental entity, the city must withhold this information under section 552.1175 if the individual to whom it pertains elects to restrict access to the information in accordance with section 552.1175(b).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued

²We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes a governmental body to withhold the home addresses and telephone numbers, personal pager and cellular telephone numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

by a Texas agency. *Id.* § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle information we have marked under section 552.130 in Exhibits A, B, C, and E.

We note the remaining information includes an account number. Section 552.136 of the Government Code provides “[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(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the credit card number we have marked in Exhibit A under section 552.136.

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). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The addresses we have marked do not appear to be of types specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses we have marked in Exhibit A under section 552.137, unless the owners of the addresses affirmatively consent to their release. *See id.* § 552.137(b).

In summary, with the exception of basic information and the citation, the city may withhold Exhibit C, Exhibit D, and the information we have marked in Exhibit E under section 552.108 of the Government Code. In conjunction with section 552.101 of the Government Code, the city must withhold the following: (1) the W-4 forms we have marked in Exhibit A under section 6103(a) of title 26 of the United States Code; (2) the CHRI we have marked in Exhibit B under chapter 411 and federal law; (3) the thumbprint we have marked in Exhibit E under section 560.003 of the Government Code, and (4) the information we have marked in Exhibits A and B under common-law privacy. The city must also withhold the information we have marked (1) in Exhibit A under section 552.117(a)(2) of the Government Code; (2) in Exhibit A under section 552.1175 of the Government Code, to the extent it relates to a peace officer of another governmental entity who elects to restrict access to the information in accordance with section 552.1175(b) of the Government Code; (3) in Exhibits A, B, C, and E under section 552.130 of the Government Code; (4) in Exhibit A under section 552.136 of the Government Code; and (5) in Exhibit A under

section 552.137 of the Government Code, unless the owners of the marked e-mail addresses affirmatively consent to their release.⁴ The city must release the remaining information.⁵

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 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 394200

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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 W-4 forms under section 552.101 of the Government Code in conjunction with 26 U.S.C. § 6103(a); fingerprint information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy; a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code; a credit card number 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.

⁵We 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.