



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2010

Mr. Les Moore
Police Legal Advisor
Irving Police Department
305 North O'Connor Road
Irving, Texas 75061

OR2010-15439

Dear Mr. Moore:

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#396299.

The Irving Police Department (the "department") received a request for the case file, police reports, and crime scene photos related to a specified incident. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you assert the submitted information was the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2001-1020 (2001) and 2001-2060(2001). In those decisions, we ruled that with the exception of basic information, the information at issue was excepted from disclosure under section 552.108 of the Government Code. However, as you acknowledge, the pending criminal investigation on which the previous rulings was based has now concluded in conviction and is no longer pending. Thus, we find that the circumstances have changed, and the department may not continue to rely on Open Records Letter Nos. 2001-1020 and 2001-2060 as previous determinations. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your argument against the disclosure of the submitted information.

Next, we note the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information is part of a completed investigation conducted by the city's police department. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation made by a governmental body is expressly public unless it is either excepted under 552.108 of the Government Code or is expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 552 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for purposes of section 552.022. Consequently, the submitted information may not be withheld under section 552.103 of the Government Code. However, because information subject to section 552.022(a)(1) may be withheld under sections 552.101, 552.117, 552.1175, 552.130, and 552.136 of the Government Code, we will consider whether any of the submitted information is encompassed by those exceptions.¹

Section 552.101 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 that other statutes make confidential, such as section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(a) 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 other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

¹The 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).

- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review, we find a portion of the submitted information, which we have marked, consists of information acquired from a polygraph examination subject to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552:101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 (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 that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Upon review, we find that a portion of the submitted information consists of confidential CHRI. Accordingly, the department must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 encompasses the common-law right of privacy, which 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). The types 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. *See id.* at 683. This office has found that 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 has also found the identities of juvenile victims of abuse or neglect are excepted from public disclosure under common-law privacy. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. In addition, 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Upon review, the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the submitted information include the personal information of department employees. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117 also encompasses personal cellular telephone or pager numbers, provided that the cellular telephone or pager service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile numbers paid for by governmental body and intended for official use). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Portions of the submitted information, which we have marked, pertain to peace officers who were licensed at the time of the incident at issue; however, we are unable to determine from the information provided which, if any, of the individuals are currently licensed peace officers. Thus, we must rule conditionally. To the extent the individuals whose information we have marked are currently licensed peace officers as defined by article 2.12, the department must withhold the information we have marked under section 552.117(a)(2); however, the department may only withhold a cellular telephone or pager number if the cellular telephone or pager service was paid for with the employee's own funds. To the extent these individuals are not currently licensed peace officers, the department may not withhold the information at issue under section 552.117(a)(2).

If the individuals at issue are not currently licensed peace officers, section 552.117(a)(1) may apply to the submitted information. Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and

family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* 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). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Accordingly, to the extent the individuals whose personal information we have marked timely elected confidentiality under section 552.024, the department must withhold the information we have marked under section 552.117(a)(1). As previously noted, the department may only withhold a cellular telephone or pager number if the cellular telephone or pager service was paid for with the employee's own funds.

Section 552.117(a)(4) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175. Gov't Code § 552.117(a)(4). Accordingly, the department must withhold the information we have marked under section 552.117(a)(4) of the Government Code.

We note the remaining information contains the personal information of peace officers and a district attorney who are not department employees. Section 552.1175 provides in part:

Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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(a)(1), (a)(5), (b). To the extent the individuals at issue fall within the scope of section 552.1175(a) and elect to restrict public access to their personal information, the department must withhold the information we have marked under section 552.1175. To the extent these individuals do not fall within the scope of section 552.1175(a) or did not elect to restrict public access to their personal information, the department may not withhold the information we have marked pertaining to these individuals under section 552.1175.

Section 552.130 of the Government Code exempts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a). Thus, the department must withhold the Texas motor vehicle record information we have marked, including the Texas motor vehicle record information we have noted on the submitted disk, pursuant to section 552.130 of the Government Code.

Section 552.136 of the Government Code states "[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." Gov't Code § 552.136(b). Accordingly, the department must withhold the bank account and credit card numbers we have marked, including the credit card numbers we have noted on the submitted disk, pursuant to section 552.136 of the Government Code.²

In summary, the department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals whose information we have marked are currently licensed peace officers as defined by article 2.12, the department must withhold the information we have marked under section 552.117(a)(2). If the individuals are not licensed peace officers, then to the extent these individuals timely elected confidentiality under section 552.024, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code. In either case, the department may only withhold a cellular telephone or pager number if the cellular telephone or pager service was paid for with the peace officer or employee's

²We note this office 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 of a member of the public under section 552.130 of the Government Code and bank account and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

own funds. The department must withhold the deceased officer's personal information, which we have marked, under section 552.117(a)(4) of the Government Code. To the extent the individuals whose personal information is at issue fall within the scope of section 552.1175(a) and elect to restrict public access to their personal information, the department must withhold the information we have marked under section 552.1175. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code, including the Texas motor vehicle information we have noted on the submitted photo disk. The department must withhold the access device numbers we have marked, including the credit card numbers we have indicated on the submitted disk, under section 552.136 of the Government Code. The remaining information must be released.³

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 396299

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the information being released contains social security numbers. 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).