



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2010

Ms. Julia Gannaway
Lynn Pham & Ross, LLP
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2010-16149

Dear Ms. Gannaway:

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# 389029.

The City of White Settlement (the "city"), which you represent, received a request for the city police chief's city personnel file and four named city police officers' departmental files. You state the city has released the police chief's personnel file to the requestor. You claim the requested departmental files are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions 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." Gov't Code § 552.101. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code. The application of chapter 143 of the Local Government Code is delineated in section 143.002 of that code, which provides:

(a) This chapter applies only to a municipality:

¹We assume 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.

(1) that:

(A) has a population of 10,000 or more;

(B) has a paid fire department or police department; and

(C) has voted to adopt this chapter or the law codified by this chapter; or

(2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

Loc. Gov't Code § 143.002(a). Thus, chapter 143 of the Local Government Code applies only to civil service municipalities that have voted to adopt the chapter. You have informed this office the city has never held such an election. You have not submitted any additional arguments explaining how the city adopted chapter 143 in accordance with section 143.002. We therefore conclude the confidentiality provisions of section 143.089 of the Local Government Code are not applicable to the submitted information, and the city may not withhold the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Section 411.083 of the Government Code deems confidential CHRI the 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. 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. You marked a driving record inquiry and a document entitled Retesting Report, both of which you claim are confidential under chapter 411. However, the Retesting Report does not contain any criminal history information. Additionally, we note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082 (2)(B) (definition of CHRI does not include driving record information). Accordingly, we conclude the information you marked does not constitute confidential CHRI for purposes of chapter 411, and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides "[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). You seek to withhold the submitted fingerprints under section 560.003. There is no indication the requestor has a right of access to the fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Therefore, the city must withhold the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

The submitted information contains L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Thus, we agree the city must withhold the L-2 and L-3 declarations you marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Next, you claim one of the submitted documents is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 217.7 of the Administrative Code. Section 217.7 states that before hiring or appointing a licensee, an agency shall contact TCLEOSE, electronically or in writing, to comply with the reporting requirements of section 1701.451 of the Occupations Code, and that a report or statement

submitted under section 217.7 is exempt from disclosure under the Act. *See id.* § 1701.451 (requirements of preemployment request for early termination report and background check confirmation form); *see also* 37 Tex. Admin. Code § 217.7(a), (h). However, the document you marked is an F-6 Report of Training form. This form is not a report or statement that must be submitted to TCLEOSE in order to comply with the reporting requirements of section 1701.451 of the Occupations Code. Therefore, section 217.7 is not applicable to this information, and it may not be withheld under section 552.101 on that basis.

Section 552.117(a)(2) excepts from public disclosure the home address, 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 whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² Gov't Code § 552.117(a)(2). We marked the portions of the remaining information that reveal an officer's home address or social security number. The city must withhold the information we marked under section 552.117(a)(2).³

You claim the Texas motor vehicle record information you marked in the remaining information is excepted under section 552.130 of the Government Code. 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, we agree the city must withhold the information we marked under section 552.130 of the Government Code.

In summary, the city must withhold: (1) the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, (2) the L-2 and L-3 declaration forms you marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, (3) the information we marked under section 552.117(a)(2) of the Government Code, and (4) the information we

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

³As our ruling is dispositive for this information, we need not address your argument under section 552.147 of the Government Code.

marked under section 552.130 of the Government Code.⁴ The remaining submitted information must be released.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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 389029

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Open Records Decision No. 684 authorizes a governmental body to withhold ten categories of information, including fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; L-2 and L-3 declaration forms under section 552.101 in conjunction with section 1701.306 of the Occupations Code; as well as a Texas driver's license number and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁵The remaining information includes social security numbers pertaining to individuals who are not licensed police officers. 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. See Gov't Code § 552.147(b).