



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2011

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-00730

Dear Ms. Middlebrooks:

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# 405971 (PIR# 2010-9900).

The Dallas Police Department (the "department") received a request for all records related to administrative investigation control number 2010-169 involving a named department officer. You claim portions of the requested information are excepted from disclosure under sections 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.³ Section 552.102(a) 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). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex.*

¹Although you also raise section 552.101 of the Government Code as an exception to disclosure of the requested information, you have provided no arguments regarding the applicability of this section. We, therefore, assume you no longer assert section 552.101. *See* Gov't Code §§ 552.301(b), (e), .302.

²We 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 those records contain substantially different types of information than that submitted to this office.

³The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd., No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). We have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code 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 whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). Section 552.117(a)(2) is also applicable to a peace officer's cellular telephone number, if the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 506 at 5-6 (1988) (determining predecessor to section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use).

You have marked in the remaining information the named officer's personal information, which includes the officer's cellular telephone number. You have not informed us whether the officer's marked cellular telephone number is paid for by the officer. Thus, to the extent the marked cellular telephone number is paid for by the named officer, the department must withhold this information, along with the other personal information you have marked, and the additional personal information we have marked, under section 552.117(a)(2) of the Government Code. To the extent the officer did not pay for the cellular telephone number, the cellular telephone number must be released, but the remaining marked personal information must be withheld under section 552.117(a)(2) of the Government Code.

You claim some of the remaining information is excepted under section 552.130 of the Government Code, which provides 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. Gov't Code § 552.130(a)(1), (2). You have marked a Texas driver's license number, Texas license plate numbers, and a vehicle identification number. Additionally, we have marked a Texas license plate type. Thus, the department must withhold the marked Texas motor vehicle record information under section 552.130 of the Government Code.⁵

You assert some of the remaining information is excepted under section 552.136 of the Government Code, which provides "[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining "access device"). You seek to withhold the named officer's employee

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

⁵We 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 under section 552.130, without the necessity of requesting an attorney general decision.

identification number under section 552.136. You inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. Thus, we find the department must withhold the employee identification number you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the marked information under section 552.102(a) of the Government Code; the marked personal information under section 552.117(a)(2) of the Government Code, including the officer's cellular telephone number, to the extent the officer paid for her cellular telephone service; the marked Texas motor vehicle record information under section 552.130 of the Government Code; and the marked employee identification number under section 552.136 of the Government Code. The remaining information must be released.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 405971

Enc. Submitted documents

c: Requestor
(w/o enclosures)