



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2011

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-03230

Dear Mr. Phillips:

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# 410873 (Fort Worth PIR No. W005656).

The City of Fort Worth (the "city") received a request for the entire personnel file of a named officer. You state you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), 301(e)(1)(D). The previous determination issued in Open Records Decision No. 670 (2001) authorizes a governmental body to withhold the home addresses and telephone numbers, social security numbers, and family member information of peace officers, as defined by article 2.12 of the Code of Criminal Procedure, under section 552.117(a)(2) without the necessity of requesting a decision from this office. Therefore, the home address of a peace officer that has been redacted from Exhibit D may be withheld on the basis of Open Records Decision No. 670. You do not assert, however, nor does our review of our records indicate, you have been authorized to withhold any of the

remaining redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we are unable to discern the nature of the remaining redacted information, the city has failed to comply with section 552.301, and such information is presumed public under section 552.302. *See* Gov't Code §§ 552.301(1)(D), .302. Thus, we conclude that the city must release the remaining redacted information, which we have marked, to the requestor. If you believe that the remaining redacted information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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. This section encompasses section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.¹ *Id.* § 143.089(a)(1)-(2). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made the records confidential. *See id.* at 949; Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files). This confidentiality extends to any records maintained in the internal file that reasonably relate to the police officer's employment relationship. *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied).

You assert the documents in Exhibit C were taken from the city police department's internal files which are maintained by the city police department for its own use. You state any documents in Exhibit C involving allegations of misconduct were determined to be unfounded or did not result in discipline under chapter 143. Based on these representations and our review of the information at issue, we agree the documents in Exhibit C are confidential pursuant to section 143.089(g). Accordingly, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* §§ 143.051-.055.

Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states, except as provided by subsection (c) or (e), Texas Peace Officer's Crash Reports ("accident reports") are privileged for the confidential use of certain specified entities. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides at least 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, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with two of the three pieces of information; thus, the city must withhold the accident report you have marked in Exhibit E under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (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). This office has also determined that a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (stating that net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to the public). Upon review, we agree the information you have marked reflects personal financial decisions made by a city employee. Furthermore, we find there is no legitimate public interest in this information. Therefore, the city must withhold the marked information in Exhibit D pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

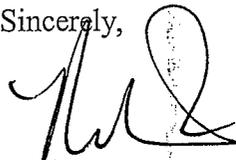
In summary, the city must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the accident report in Exhibit E under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The city must withhold the marked information in Exhibit D pursuant to section 552.101 of the Government Code in

conjunction with common-law privacy. The remaining information, including the remaining redacted 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 410873

Enc. Submitted documents

cc: Requestor
(w/o enclosures)