



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2011

Mr. John R. Batoon
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

OR2011-06090

Dear Mr. Batoon:

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# 416296.

The City of El Paso (the "city") received a request for fourteen categories of information, including the personnel files of two city police officers, information related to a specified accident, and records pertaining to maintenance or repairs of a particular street light. We understand you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted the birth dates, work telephone numbers, and student identification numbers of city employees from the submitted documents. 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

¹Section 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.

§§ 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the city has been authorized to withhold the information at issue without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the city must not redact information from the information it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

Next, we note you did not submit information responsive to the portion of the request for records pertaining to maintenance or repairs of a particular street light. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See Gov't Code* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

The submitted documents include a CR-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See Transp. Code* § 550.064 (officer's accident report). Section 550.065(b) states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the city with the specified items of information. Accordingly, the city must release the CR-3 accident report, which we have marked, pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we address your claim under section 552.108 of the Government Code for the remaining information. Section 552.108 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* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You

state the submitted information relates to an ongoing criminal case and release of the information would interfere with the detection, investigation, and prosecution of an alleged crime. Based on your representation and our review, we find release of some of the submitted information would interfere with the detection, investigation, and prosecution of an alleged crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

As a general rule, section 552.108 is not applicable to a law enforcement agency's personnel records. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) not applicable to documents obtained by police department for purpose of evaluating applicant's fitness for employment), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision Nos. 562 at 10 (1990) (statutory predecessor to section 552.108(b) not applicable to employment information in police officer's file). Upon review, we find you provide no explanation for how the submitted personnel files, which are purely administrative in nature, relate to the criminal case such that release of the personnel files would interfere with that case. Therefore, we find you failed to demonstrate that section 552.108 is applicable to the submitted personnel files, and that information may not be withheld on that basis.

We note that 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). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, which must be released, the city may withhold the information we have marked under section 552.108(a)(1) 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 1324a of title 8 of the United States Code, which provides an Employment Eligibility Verification Form I-9 and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The remaining information includes federal I-9 forms. Release of the forms in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude the submitted I-9 forms, which we have marked, are confidential pursuant to section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also incorporates the doctrine of common-law privacy, which protects information that (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. *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 satisfied. *Id.* at 681-82.

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. *Id.* at 683. In addition, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure. *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 pre-tax 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).*

Upon review, we find some of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Thus, this information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.² 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. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

We understand you have redacted portions of the submitted information pursuant to section 552.117(a)(2) of the Government Code. The previous determination issued in Open Records Decision No. 670 (2001) authorizes a governmental body to withhold the home addresses, home telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

section 552.117(a)(2) without the necessity of requesting an attorney general decision.³ Although you have redacted some of the submitted information under section 552.117(a)(2), the remaining portions of the documents at issue contain other information, which we have marked, that also is subject to section 552.117(a)(2). Section 552.117(a)(2) excepts from disclosure the current and former home addresses and home telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). We note section 552.117 does not protect a governmental employee's work telephone number. Accordingly, the city must withhold the home addresses, home telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers which you have redacted, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code.

We also understand you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to the previous determination issued in Open Records Decision No. 684 (2009). Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We note the remaining records contain other information, which we have marked, that also is subject to section 552.130. Therefore, the city must withhold the Texas motor vehicle record information you have redacted, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, the city must release the CR-3 accident report, which we have marked, pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of basic information, which must be released, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The submitted I-9 forms, which we have marked, are confidential pursuant to section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and may only be released in compliance with the federal laws and regulations governing the employment verification system. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. We have marked the information that must be withheld under section 552.102(a) of the Government Code. The city must withhold the home addresses, home telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers which you have redacted, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code. The city must withhold the Texas motor vehicle record information you have redacted as well as the additional information we

³Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

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

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/em

Ref: ID# 416296

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note Open Records Decision No. 684 (2009) was issued by this office as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, Texas driver's license and license plate numbers, and a copy of a Texas driver's license, without the necessity of requesting an attorney general decision.