



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2011

Ms. S. McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2011-10798

Dear Ms. McClellan:

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# 425110 (DPD Request No. 2011-3983).

The Dallas Police Department (the "department") received a request for all records relating to a specified report involving a named individual. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of

¹Although your brief does not specifically raise sections 552.130 and 552.137, we understand you to raise these exceptions based on your markings in the submitted information.

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Criminal Procedure. Section 552.117(a)(2) protects a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his personal funds. Open Records Decision No. 670 at 6 (2001); *cf.* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). Accordingly, the department must withhold the information we have marked under section 552.117 of the Government Code.³ The department must withhold the marked cellular telephone number of the named peace officer only if the officer pays for the cellular telephone service with personal funds.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The type 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. This office has found that personal financial information not related to a financial transaction between an individual and a governmental body is intimate and embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you have marked pertains to an individual who has been de-identified. Accordingly, his privacy interests have been protected, and none of the remaining information you have marked may be withheld under section 552.101 in conjunction with common-law privacy.

You claim a portion of the remaining information is excepted from disclosure under section 552.102 of the Government Code. 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.*

³We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

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 find the department must withhold the information you have marked under section 552.102(a) of the Government Code.

You also raise section 552.130 of the Government Code for portions of the remaining information. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or an agency of another state or country is excepted from public release. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)-(2)). Accordingly, we agree the department must withhold the information you have marked under section 552.130 of the Government Code.

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136 provides that "[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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). 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 agree the department must withhold the identification number you have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. One of the e-mail addresses you marked is maintained by a governmental entity for one of its employees. Accordingly, this e-mail address may not be withheld under section 552.137. The e-mail addresses we have marked are not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses have affirmatively consented to their release under section 552.137(b).⁴

To conclude: (1) the department must withhold the information we have marked under section 552.117 of the Government Code; however, the department must only withhold the

⁴We 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 a Texas driver's license number under section 552.130 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

marked cellular telephone number if the individual whose personal information is at issue paid for the cellular telephone service with personal funds; (2) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the department must withhold the information you have marked under section 552.102 of the Government Code; (4) the department must withhold the information you have marked under section 552.130 of the Government Code; (5) the department must withhold the identification number you have marked under section 552.136 of the Government Code; and (6) the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses have affirmatively consented to their release under section 552.137(b). 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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 425110

Enc. Submitted documents

c: Requestor
(w/o enclosures)