



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
Dallas, Texas 75215

OR2011-10809

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# 425108 (DPD# 2011-3979).

The Dallas Police Department (the "department") received a request for all information related to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.136 of the Government Code. We have considered the claimed exceptions 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. Section 552.101 encompasses information made confidential by other statutes, such as section 550.065 of the Transportation Code. The submitted information contains a CR-3 accident form you claim is excepted from disclosure by section 550.065. This section provides that, except as provided by subsection (c), accident reports are

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

privileged and confidential. Transp. Code § 550.065. Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides 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). In this instance, the requestor has not provided the department with two of the three requisite pieces of information specified by the statute. Accordingly, the department must withhold the CR-3 accident report form you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints and records of hand geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint. Therefore, the department must withhold the fingerprint you have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers provided by a service supplier. *See* Open Records Decision No. 649 (1996). We understand the City of Dallas is part of an emergency communication district established under section 772.318. You have marked the telephone number of a 9-1-1 caller the department seeks to withhold. We conclude the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code, if it was furnished by a 9-1-1 service supplier. If the marked information was not provided by a 9-1-1 service supplier, this information may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 also encompasses the common-law right to privacy, which protects information if it (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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment

of mental disorders, attempted suicide, and injuries to sexual organs). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department must withhold the information marked under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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). Thus, *Texas Comptroller* applies to only a public employee’s birth date maintained by the employer in an employment context. In this instance, some of the birth dates you have marked are found in law enforcement records. Because these records do not constitute personnel records of a government employee, the department may not withhold the dates of birth marked in these records. Therefore, we conclude the department may withhold only the information we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public 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 made an election under section 552.024 or 552.1175 of the Government Code to keep such information confidential. 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)); *see* Gov’t Code §§ 552.024, .1175. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. However, section 552.117 applies only to records that a governmental body holds in an employment capacity. As noted, a portion of the submitted information consists of law enforcement records not held in an employment capacity. Therefore, we find the department may withhold only the information we have marked under section 552.117.

However, we note section 552.1175 of the Government Code may apply to the remaining information you seek to withhold under section 552.117. Section 552.1175 applies to information pertaining to peace officers that the department does not hold in an employment context and provides in part:

- (a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1); Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Accordingly, we determine the department must withhold the information we have marked under section 552.1175 if the peace officer at issue elects to restrict access to his information in accordance with section 552.1175(b). If no election is made, the department may not withhold the individual's information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; [or] (2) a motor vehicle title or registration issued by an agency of this state or another state or country[.]" 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). Therefore, the department must withhold the information you have marked under section 552.130.²

Section 552.136 of the Government Code 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 numbers you have marked under section 552.136 of the Government Code.

² We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing the withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the department must withhold the CR-3 form under section 552.101 in conjunction with section 550.065 of the Transportation Code. The department must also withhold the information you have marked under section 552.101 in conjunction with section 560.003 of the Government Code, section 772.318 of the Health and Safety Code, and common-law privacy. The department must withhold the information we have marked under sections 552.102 and 552.117. The department must withhold the information we have marked under section 552.1175 if the peace officer at issue elects to restrict access to his information under section 552.1175(b). Finally, the department must withhold the information you have marked under sections 552.130 and 552.136. The remaining information must be released to the requestor.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/tf

Ref: ID # 425108

Enc. Submitted documents

c: Requestor
(w/o enclosures)

