



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 1, 2011

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-10953

Dear Ms. Byles:

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# 425653 (Fort Worth PIR No. W008808).

The City of Fort Worth (the "city") received a request for disciplinary letters written to a named police officer and any supporting documentation of the allegations in those letters. You state the city will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, part of which is a representative sample.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. This section encompasses section 143.089 of the Local Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating

¹We assume the "representative sample" of information 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 those submitted to this office.

to a police officer: a file that must be maintained as part of the officer's civil service file and another the police department may maintain for its own use. *See* 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. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or are in the possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You represent portions of the submitted information pertain to allegations of wrongdoing on the part of two officers. You state these allegations did not result in discipline. You represent this information is taken from the city police department's personnel file for the officers at issue. Upon review, we agree some of the information you have marked constitutes information in the internal file maintained by the city's police department for its own use and is confidential under section 143.089(g) of the Local Government Code. However, we note the submitted documents clearly show one of the officers was indefinitely suspended at the conclusion of the investigation and prior to his resignation. Therefore, despite your assertions, we find the information you have marked pertaining to this officer, which we have indicated, resulted in disciplinary action against this officer. As noted above, an officer's civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. *See* Local

Gov't Code § 089(a)(2); *see also id.* §§ 143.051-.052 (suspension and uncompensated duty are "disciplinary action[s]" for purposes of section 143.089(a)(2)). Thus, this information must be maintained in this officer's civil service file pursuant to section 143.089(a)(2). Further, we note you have marked information pertaining to the named officer, and you inform us the named officer was indefinitely suspended. We have marked this information that must also be placed in this officer's civil service file. Accordingly, the information we marked as civil service file records subject to section 143.089(a)(2) may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g). However, we find the remaining information you have marked is confidential under section 143.089(g) and must be withheld under section 552.101.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). Section 1701.454 provides as follows:

(a) A report or statement submitted to the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this section, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. The submitted information includes F-5 Report of Separation of License Holder forms. Upon review of the submitted information, we find the officers at issue resigned or were terminated due to a violation of law other than a traffic violation. Therefore, these reports are not confidential under section 1701.454, and the city may not withhold them under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law 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 established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history) (1990), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy

protects assets and income source information). Upon review, we find the portions of information we have marked are highly intimate or embarrassing and not of legitimate public interest. Thus, the city must withhold this marked information under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate any portion of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining information may be withheld 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). Having carefully reviewed the information at issue, we find the information you have marked and the information we have marked 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, emergency contact information, 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.² 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)(2)). We note section 552.117 also encompasses a personal cellular telephone number, if the officer personally pays for the service. *See* Open Records Decision No. 506 at 5-6 (1998) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). We note you have marked a work address under section 552.117; however, this information is not protected by section 552.117. Accordingly, this address, which we have marked for release, may not be withheld under section 552.117. You have marked the personal information of some individuals and we have marked the personal information of two individuals. If the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the city must withhold the marked personal information under section 552.117(a)(2); however, the city must only withhold the marked cellular telephone number if the cellular telephone service was not paid for with city funds. If the individuals are not currently licensed peace officers, their personal information may not be withheld under section 552.117(a)(2).

²“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

In that event, the marked information may be confidential under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 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)(1)). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. If the individuals whose information is at issue timely elected confidentiality under section 552.024, the city must withhold the marked information under section 552.117(a)(1); however, the city may only withhold the marked cellular telephone number if the service was not paid for with city funds. The city may not withhold this information under section 552.117(a)(1) if the individuals did not timely elect to keep the marked information confidential.³

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), (b). We have marked a personal e-mail address the city must withhold under section 552.137, unless its owner affirmatively consents to its release.

In summary, except for the information we have indicated and marked for release, the city must withhold the information you have marked 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 information we have marked under section 552.101 in conjunction with common-law privacy. The city must withhold the marked information under section 552.102(a) of the Government Code. Except for the information we have marked for release, the city must withhold the information you have marked and the information we have marked under section 552.117(a)(2) of the Government Code if the individuals whose information is at issue are currently licensed peace officer; however, the city must only withhold the marked cellular telephone number if the cellular telephone service was not paid with city funds. If the individuals whose information is at issue are no longer licensed peace officers, the city must withhold the marked information under section 552.117(a)(1) of the Government Code if the individuals timely elected confidentiality under section 552.024 of the Government Code; however, the city may only withhold the marked cellular telephone

³Regardless of the applicability of section 552.117 of the Government Code, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living individual without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147.

number if the service was not paid for with city funds. The city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its release.⁴ 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 425653

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.