



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 29, 2011

Ms. Karen Anderson  
Senior Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>RD</sup> Floor  
Fort Worth, Texas 76102

OR2011-12446

Dear Ms. Anderson:

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# 428198 (W009475).

The City of Fort Worth (the "city") received a request for civil service, internal affairs, personnel information, and disciplinary records of several city police officers; the identities of all officers at the scene of the requestor's arrest; and internal affairs consistency reports for a specified time period. You state the city has released some of the requested information. You further state you will redact social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

The city acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301 of the Government Code. *Id.* § 552.301. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302;

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<sup>1</sup>Section 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. Gov't Code § 552.147(b).

*Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

You raise sections 552.101, 552.102, 552.117, and 552.130 of the Government Code for portions of the submitted information. Because these sections can provide compelling reasons to withhold information from disclosure, we will address their applicability.

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 information made confidential by other statutes, such as 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 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 city police officers. You state these allegations did not result in discipline. You represent this information is taken from the city police department's personnel files for the officers at issue. Upon review, we agree some of the information you have marked constitutes information in the internal files 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 two of the officers were indefinitely suspended at the conclusion of the investigation and prior to their resignation. Therefore, despite your assertions, we find the information you have marked pertaining to these officers, which we have indicated, resulted in disciplinary action against these officers. 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 the officers' civil service files pursuant to section 143.089(a)(2). 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. The F-5 report forms we have marked do not indicate the officers at issue resigned or were terminated due to substantiated incidents of excessive force or

violations of the law other than traffic offenses. Therefore, these reports are confidential under section 1701.454, and the city must withhold them under section 552.101 on that basis.<sup>2</sup>

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.218 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 860,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). You state the city is part of an emergency communication district that is subject to section 772.218 of the Health and Safety Code. You further state the telephone numbers you have marked were provided by a 9-1-1 service supplier. Based on your representations, we conclude the city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. We have marked some additional information that must be withheld under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

You raise section 411.083 of the Government Code for portions of the remaining information. Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. However, section 411.083 does not apply to active warrant information or other information relating to a person’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Upon review, we find the information

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<sup>2</sup>As we make this determination, we do not address your remaining claims regarding this information.

we have marked consists of CHRI that is confidential under chapter 411 and federal law. Accordingly, the city must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The remaining information you have marked is not CHRI and it may not be withheld under section 552.101 on that basis.

You also claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See 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.

This office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See Gov't Code § 411.081(b)*.

Common-law privacy also encompasses certain types of personal financial information. This office has determined financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 545 at 4* (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), *523 at 4* (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), *373 at 4* (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You seek to withhold employee birth dates in the remaining records under section 552.102 of the Government Code. 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) exempts 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. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). We note, however, that some of the birth dates you have marked do not belong to city employees. Accordingly, with the exception of the birth dates we have marked for release, the city must withhold the employee birth dates you have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code exempts 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, 82<sup>nd</sup> 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. You state the individuals whose information is at issue timely elected confidentiality under section 552.024. You have marked the personal information of some individuals and we have marked some additional personal information. We note some of the information you have marked under section 552.117 pertains to a security guard and a civilian witness, neither of whom is a city employee; the city may not withhold this information, which we have indicated, under section 552.117.<sup>3</sup> The city must withhold the remaining marked information under section 552.117(a)(1).

Some of the remaining information may be protected by section 552.1175 of the Government Code. Section 552.1175 applies to commissioned security officers as defined by section 1702.002 of the Occupations Code, and provides in pertinent part:

(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

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<sup>3</sup>We note this information also does not pertain to a peace officer. *See* Gov’t Code § 552.1175.

(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.

Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). The remaining information contains the home address and telephone number of a security guard who may be a commissioned security officer for purposes of section 1702.002. *See* Occ. Code § 1701.002(5) (defining "commissioned security officer" as a security officer to whom a security officer commission has been issued by the Texas Private Security Board). Thus, if this security guard is a commissioned security officer who elects to restrict access to the personal information we have marked in the submitted records, the city must withhold this marked information under section 552.1175 of the Government Code. If this individual is not a commissioned security officer who elects to restrict access to his information, the information we marked may not be withheld on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as amendments to Gov't Code § 552.130(a)(1), (2)). The city must withhold the driver's license numbers you redacted under section 552.130 of the Government Code. The city must also withhold the information we have marked under section 552.130 of the Government Code.<sup>4</sup>

In summary, except for the civil service file records we have indicated, 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 F-5 report forms are confidential under section 1701.454, and the city must withhold them under section 552.101 of the Government Code. The city must withhold the telephone numbers you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. We have marked the CHRI the city must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Except for the information we have marked for release, the city must withhold the information you have marked under section 552.102(a) of the Government Code. Except for the information pertaining to the security guard and the witness, the city must withhold the information you have marked and the information we

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<sup>4</sup>We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including Texas driver's license and license plate numbers under section 552.130 of the Government Code.

have marked under section 552.117(a)(1) of the Government Code. Provided the security guard is a commissioned security officer who elects to restrict access to the personal information we have marked in the submitted records, the city must withhold this marked information under section 552.1175 of the Government Code. If this individual is not a commissioned security officer who elects to restrict access to his information, the marked information may not be withheld on that basis. The city must withhold the driver's license numbers you redacted and the information we have marked under section 552.130 of the Government Code. The remaining submitted 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](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/dls

Ref: ID# 428198

Enc. Submitted documents

c: Requestor  
(w/o enclosures)