



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2011

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

OR2011-13982

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# 431137 (DPD Request Nos. 2011-5977 and 2011-5993).

The Dallas Police Department (the "department") received two requests for information. The first requestor seeks (1) all requests for control numbers for June 2011, (2) all internal affairs morning reports for June 2011, (3) the most recent administrative leave and restricted duty list, and (4) all internal affairs weekly reports for June 2011. The second requestor seeks control number NT-2011-120. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the department's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure.

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<sup>1</sup>We 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.

Gov't Code § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). You state the department received both requests for information on July 11, 2011. Accordingly, the tenth business day after the receipt of the requests was July 25, 2011. Although you timely submitted your initial request for a decision to this office, you did not raise sections 552.108, 552.130, and 552.137 of the Government Code until July 26, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, with respect to your claims under sections 552.108, 552.130, and 552.137, the department failed to comply with the procedural requirements mandated by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to timely raise section 552.108, the department has waived its argument under that exception and may not withhold any of the submitted information on that basis. Because sections 552.130 and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these exceptions, as well as your timely raised arguments.

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 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 satisfied. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, this office has also found the public

has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). You claim the information you have marked is confidential pursuant to common-law privacy. 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 in conjunction with common-law privacy. However, we find the remaining information you seek to withhold is either not highly intimate or embarrassing or is of legitimate public interest because it pertains to a department officer's employment qualifications and job performance. *See* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Consequently, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, emergency contact information, social security number, and family member information regardless of whether the peace officer made an election 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)(2)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). In this instance, it is unclear whether the employees whose information you have marked, as well as the employees whose information we have marked, are currently licensed peace officers as defined by article 2.12. Accordingly, if the employees at issue are currently licensed peace officers as defined by article 2.12, then, with the exception of the information we have marked for release, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(2). However, the department may not withhold the marked cellular telephone numbers under this exception unless the officers at issue pay for the cellular telephone services.

If the employees at issue are not currently licensed peace officers, then the marked personal information may be subject to section 552.117(a)(1) of the Government Code. Additionally, you have marked information pertaining to a department employee who is not a peace officer that you claim is subject to section 552.117(a)(1). Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who requests that 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 official or 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You do not indicate whether the employees whose information is at issue requested confidentiality pursuant to section 552.024. Accordingly, if these employees timely elected confidentiality, then, with the exception of the information we have marked for release, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1). However, the department may only withhold the marked cellular telephone numbers if the department does not pay for the cellular telephone services. If the employees did not timely elect confidentiality, the department may not withhold any of the marked information under section 552.117(a)(1).

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information 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;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

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). Upon review, we find the department must withhold the information you have marked, as well as the license plate number we have marked, under section 552.130.

Section 552.136(b) of the Government Code provides "[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 bank account. However, section 552.136 is based on privacy

principles. Thus, the second requestor has a right of access to an access device number that relates to her. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the second requestor's identification number, which we have marked, must only be withheld from the first requestor under section 552.136. The department must withhold the information you have marked under section 552.136 from both requestors.

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). *See Gov't Code* § 552.137(a)-(c). Accordingly, the department must withhold the personal e-mail address you have marked under section 552.137, unless the owner of the address affirmatively consents to its public disclosure.<sup>2</sup>

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the employees at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then, except for the information we have marked for release, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code. However, the department may only withhold the cellular telephone numbers we have marked if the department does not pay for the cellular telephone services. With regard to the employee who is not a license peace officer and if the other employees at issue are not licensed peace officers, but timely elected confidentiality, then, except for the information we have marked for release, the department must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1) of the Government Code. However, the department may only withhold the marked cellular telephone numbers if the department does not pay for the cellular telephone services. The department must withhold the information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code. The department must also withhold the information we have marked from the first requestor and the information you have marked from both requestors under section 552.136 of the Government Code. Lastly, the department must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its release. The remaining information must be released.

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<sup>2</sup>We 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 personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 431137

Enc. Submitted documents

c: Requestor  
(w/o enclosures)