



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2011

Ms. Erin A. Higginbotham
Denton, Navarro, Rocha & Bernal
2500 West William Cannon, Suite 609
Austin, Texas 78745

OR2011-15030

Dear Ms. Higginbotham:

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# 433931.

The Copperas Cove Police Department (the “department”), which you represent, received a request for specified information from the personnel files of three named former or current city officers.¹ You state the department will make some of the requested information available to the requestor, but inform us the department is withholding the following information pursuant to the previous determination this office issued in Open Records Decision No. 684 (2009) without requesting a decision from this office: direct deposit authorization forms under section 552.101 of the Government Code in conjunction with the common-law right to privacy; L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code; Texas driver’s license and license plate numbers under section 552.130; credit card, debit card, charge card, insurance policy, bank

¹The department sought and received clarification of the information requested. *See* Gov’t Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

account, and bank routing numbers under section 552.136; and e-mail addresses of members of the public under section 552.137.² You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, and 552.119 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).

You assert some of the information at issue is excepted from disclosure under section 552.1175 of the Government Code. Section 552.1175(b) provides in part the following:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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.

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general opinion, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and credit card, debit card, charge card, insurance policy, bank account, and bank routing numbers under section 552.136 of the Government Code. However, on September 1, 2011, the Texas legislature amended sections 552.130 and 552.136 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) and subsection 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)); Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(c)). If a governmental body redacts information described in subsections 552.130(a)(1) and (a)(3), it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). In addition, if a governmental body redacts information described in subsection 552.136(b), it must notify the requestor in accordance with section 552.136(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(d), (e)). Thus, the statutory amendments to sections 552.130 and 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1), 552.130(a)(3), and 552.136(b) in accordance with sections 552.130 and 552.136, not Open Records Decision No. 684.

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)). Upon review, we find you have not established section 552.1175 is applicable to the submitted information that pertains to the three named former or current department officers. Thus, the department may not withhold the information pertaining to these officers on that ground. However, you have marked information under section 552.1175 that pertains to peace officers who are not current or former employees of the department. Thus, if these individuals are currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), then the department must withhold the information you have marked pertaining to these individuals under section 552.1175. However, the department may not withhold this information under section 552.1175 if the individuals either are not currently licensed peace officers or they do not elect to restrict access to this information in accordance with section 552.1175(b).

Section 552.117 of the Government Code is applicable to information pertaining to the three named department officers. Section 552.117(a) provides in relevant part the following:

Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members

- (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;
- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable[.]

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 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Government Code section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Although section 552.117(a)(2) appears to be applicable to the information at issue, you do not inform us whether each of the named officers is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Nevertheless, you have submitted documentation showing the officers at issue elected to keep their home addresses, home telephone numbers, social security numbers, and information that reveals whether they have family members confidential before the department received the request for information. Therefore, we agree the department must withhold the home addresses, home

telephone numbers, social security numbers, and family member information you have marked, as well as the information we have marked, under section 552.117(a)(1). However, the department may only withhold the marked cellular telephone numbers under section 552.117(a)(1) if the employee concerned paid for the cellular telephone service. You also seek to withhold under section 552.117 information that does not consist of a home address, home telephone number, emergency contact information, social security number, or information that reveals whether the officers at issue have family members. Thus, the department may not withhold this information, which we have marked for release, under section 552.117, but instead must provide it to the requestor.

Section 552.101 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 protected by other statutes. Pages 64, 65, and 66 of the submitted information consist of an Employment Eligibility Verification, Form I-9, and its attachments. Section 1324a of title 8 of the United States Code provides an I-9 form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of these documents under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the department must withhold pages 64, 65, and 66 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient’s signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, 159.005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

Pages 60, 273, 283-293, 299, 302, 303, 304, 309, 310, 313, 314, 319-323, 325-327, and 329-335 constitute medical records. Thus, the department may only release this information in accordance with the MPA. However, we find you have not established any of the remaining information consists of medical records for purposes of the MPA. Thus, the department may not withhold any of the remaining information on that ground.

Section 552.101 also encompasses the Family and Medical Leave Act (the "FMLA"). See 29 U.S.C. § 2801 *et seq.* Section 825.500 of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states the following:

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[,] except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). Pages 271, 272, 274-282, and 315-318 are confidential under section 825.500, and none of the release provisions of the FMLA applies to them. Thus, the department must withhold this information pursuant to section 552.101 in conjunction with the FMLA.

Section 552.101 also encompasses section 550.065 of the Transportation Code. Pages 337, 339, 343, 346, 349, 351, 352, 353, 356, 357, 360, 363, 366, 369, 372, 375, 379, 383, 384, and 386 consist of accident report forms that were completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. See *id.* § 550.065(b). Section 550.065(c)(4) provides for 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). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.³ *Id.* The requestor has not provided the department with two of the three pieces of information pursuant to section 550.065(c)(4). Thus, the department must withhold this information under section 552.101 in conjunction with section 550.065. You have not established, however, the remaining information consists of accident reports that are subject to section 550.065. Therefore, the department may not withhold any of the remaining information under section 552.101 on that ground.

Criminal history record information (“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 (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 that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F 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, but 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.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. The department must withhold page 45 under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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). The types of information considered intimate or 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 the following types of information are excepted from required public disclosure under

³Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, the public generally has a legitimate interest in public employment and public employees. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs).

Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. Upon review, however, we find the remaining information either is not highly intimate or embarrassing, or it is of legitimate public interest. Therefore, the remaining information, some of which we have marked for release, is not confidential under common-law privacy, and the department may not withhold it under section 552.101 on that ground.

You also claim some of the submitted 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. 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 agree the department must withhold the dates of birth you have marked in red under section 552.102(a) of the Government Code. The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

We note section 552.130 is applicable to some of the remaining information.⁴ Section 552.130(a) of the Government Code provides the following:

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

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 agree the department must withhold the Texas driver's license and license plate numbers you have marked in the remaining information under section 552.130. We have marked additional motor vehicle record information that the department must also withhold under section 552.130. However, the remaining documents do not contain motor vehicle record information that is excepted from disclosure on that ground.

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). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c), and you do not inform us a member of the public has affirmatively consented to its release. Therefore, we agree the department must withhold the e-mail address you have marked under section 552.137.

Finally, we note you have marked some of the remaining information, including concealed handgun license numbers, federal tax identification numbers, Texas Comptroller Taxpayer numbers, carrier claim numbers, and a reference to a DD-214 form, but have not provided any arguments to withhold that information under the Act. *See id.* § 552.301(a)(1); *see also id.* § 552.301(b) (governmental body must label submitted information to indicate which exceptions apply to which parts of it). We are not aware of any exception that makes the remaining information confidential under the Act. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential

or stating information shall not be released to public). Therefore, the department must provide this information, which we have marked for release, to the requestor.

We conclude the following: (1) the department must withhold the information you have marked under 552.1175 of the Government Code that pertains to individuals who are not former or current employees of the department if they are currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code; (2) the department must withhold the home addresses, home telephone numbers, social security numbers, and family member information of the named former or current department officers you have marked, as well the 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 under section 552.117(a)(1) if the employee concerned paid for the cellular telephone service; (3) the department must withhold pages 64, 65, and 66 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (4) the department must withhold page 45 under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (5) the department may only release pages 60, 273, 283-293, 299, 302, 303, 304, 309, 310, 313, 314, 319-323, 325-327, and 329-335 in accordance with the MPA; (6) the department must withhold pages 271, 272, 274-282, and 315-318 under section 552.101 in conjunction with the FMLA; (7) the department must withhold pages 337, 339, 343, 346, 349, 351, 352, 353, 356, 357, 360, 363, 366, 369, 372, 375, 379, 383, 384, and 386 under section 552.101 in conjunction with section 550.065 of the Transportation Code; (8) the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy; (9) the department must withhold the dates of birth you have marked in red under section 552.102(a) of the Government Code; (10) the department must withhold the Texas driver's license and license plate numbers you have marked, as well as the information we have marked, in the remaining documents under section 552.130; (11) the department must withhold the e-mail address you have marked under section 552.137; and (12) the department must provide the remaining information to the requestor, including the information we have marked for release.⁵

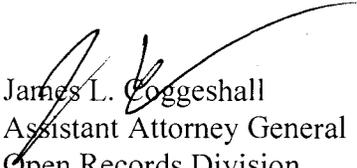
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁵As our ruling is dispositive, we do not address your other arguments to withhold this information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 433931

Enc. Submitted documents

c: Requestor
(w/o enclosures)