



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2011

Mr. B. Chase Griffith  
For City of McKinney  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2011-17268

Dear Mr. Griffith:

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# 436825 (McKinney ORR# 10-4314).

The McKinney Police Department (the "department"), which you represent, received a request for information contained in a named police officer's personnel file and for reports written by the named officer during a specified period. You state the department will release some of the information upon its receipt of payment from the requestor. You state the department will redact some information pursuant to our ruling in Open Records Decision No. 670 (2001).<sup>1</sup> You also state the department will redact social security numbers under section 552.147 of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. *See* ORD 670 at 6.

<sup>2</sup>Section 552.147 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. *See* Gov't Code § 552.147(b).

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 section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the reports related to case numbers 10 009078 and 11-000439, which involve the offense of driving while intoxicated with child passenger, were used or developed in an investigation of alleged child abuse. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the reports related to case numbers 10-009078 and 11-000439 are confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>3</sup>

Section 552.101 of the Government also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”) under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

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<sup>3</sup>As our ruling is dispositive, we do not address your remaining argument against disclosure of this information.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release information submitted under this subchapter.

Act of May 23, 2011, 82nd Leg., R.S., S.B. 545, § 4 (to be codified as an amendment to Occ. Code § 1701.454). Upon review, we find none of the submitted information is subject to section 1701.454 of the Occupations Code. Accordingly, none of the submitted information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which provides:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Upon review, we find the submitted L-3 Declaration of Psychological and Emotional Health form, which we have marked, is confidential under section 1701.306 of the Occupations Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center (the “TCIC”) 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.* at 10–12. 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 chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Section 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov't Code § 411.089(b)(1). We note section 411.083 does not apply to active warrant information or other information relating to an individual'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). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes CHRI that must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, the remaining information does not consist of CHRI that is subject to section 411.083 of the Government Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Upon review, we find the department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 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 the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 455 at 9 (1987) (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). We note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5–6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (scope of public employee privacy is narrow).

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information is either not highly intimate or embarrassing or is of legitimate public concern. Consequently, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the reports related to case numbers 10-008970, 10-008564, 11-000024, and 11-000438 pertain to cases that are open and pending and the release of these reports would interfere with pending criminal investigations. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Upon review, we agree section 552.108(a)(1) of the Government Code is generally applicable to this information. However, we note some of the reports contain DIC-24 statutory warning and DIC-25 notice of suspension forms, which were provided to the defendants in those cases. You have not explained how the release of this information, which we have marked, would interfere with the detection, investigation, and prosecution of a crime. Accordingly, the DIC-24 and DIC-25 forms we have marked may not be withheld under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the reports related to case numbers 10-008229, 10-008592, and 11-000238 pertain to investigations that have been closed, no further action will be taken, and they did not result in a conviction or deferred adjudication. Based on these representations, we agree section 552.108(a)(2) is generally applicable to this information.

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186–87. This information includes, but is not limited to, the details of the arrest, the physical condition of the arrested person, and a sufficient portion of the narrative to include a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic

information, and the DIC-24 and DIC-25 forms we have marked, the department may withhold the reports related to case numbers 10-008970, 10-008564, 11-000024, and 11-000438 under section 552.108(a)(1) of the Government Code. With the exception of basic information, the department may withhold the reports related to case numbers 10-008229, 10-008592, and 11-000238 under section 552.108(a)(2) 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.”<sup>4</sup> Gov’t Code § 552.102(a). The Texas Supreme Court has 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 department must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit, 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 amendments to Gov’t Code § 552.130(a)(1)-(2)). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

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”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the department must withhold the account numbers and insurance policy numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Upon review, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their release.

We note the remaining information contains a DD-214 form. Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions.

record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a), (b). We have marked the DD-214 form at issue. You do not inform us when the department came into possession of this form. Therefore, we must rule conditionally. If the department came into possession of the form we marked on or after September 1, 2003, the department must withhold it under section 552.140 of the Government Code. If the department received the form before September 1, 2003, then the department may not withhold it pursuant to section 552.140 of the Government Code.<sup>5</sup>

In summary, the department must withhold the following information under section 552.101 of the Government Code: (1) the reports related to case numbers 10-009078 and 11-000439 in conjunction with section 261.201 of the Family Code, (2) the L-3 form we have marked in conjunction with section 1701.306 of the Occupations Code, (3) the CHRI we have marked in conjunction with section 411.083 of the Government Code and federal law, (4) the fingerprints we have marked in conjunction with section 560.003 of the Government Code, and (5) the information we have marked in conjunction with common-law privacy. With the exception of basic information, and the DIC-24 and DIC-25 forms we have marked, the department may withhold the reports related to case numbers 10-008970, 10-008564, 11-000024, and 11-000438 under section 552.108(a)(1) of the Government Code. With the exception of basic information, the department may withhold the reports related to case numbers 10-008229, 10-008592, and 11-000238 under section 552.108(a)(2) of the Government Code. The department also must withhold: (1) the dates of birth we have marked under section 552.102(a) of the Government Code, (2) the account numbers and insurance policy numbers we have marked under section 552.136 of the Government Code, and (3) the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their release. If the department came into possession of the DD-214 form we have marked on or after September 1, 2003, the department must withhold it under section 552.140 of the Government Code. The remaining information must be released.<sup>6</sup>

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.

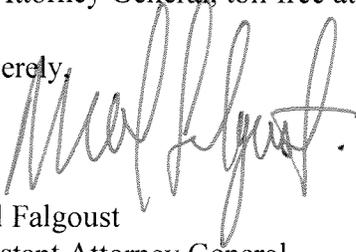
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<sup>5</sup>We note this form contains the individual's date of birth, which we have marked. This information must be withheld under section 552.102 of the Government Code.

<sup>6</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 fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, an L-3 form under section 552.101 in conjunction with section 1701.306 of the Occupations Code, e-mail addresses of members of the public under section 552.137 of the Government Code, and a DD-214 under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read 'Neal Falgoust', written over a light gray grid background.

Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 436825

Enc. Submitted documents

c: Requestor  
(w/o enclosures)