



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2011

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

OR2011-17784

Dear Ms. Armstrong:

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# 437762 (Dallas ORR# 2011-8220).

The Dallas Police Department (the "department") received a request for all e-mails sent to or from a named department officer for a specified time period. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹Although you mark information under section 552.108 of the Government Code, you have not cited a specific subsection of this exception or made any arguments to support this exception. Accordingly, we find the department has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Code § 552.101. Section 552.101 encompasses the common-law right of 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. The type 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 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we agree that the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117 of the Government Code applies to records a governmental body holds in an employment capacity. Subsection 552.117(a)(2) 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 section 552.024 or section 552.1175 of the Government Code.³ 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)). Additionally, section 552.117(a)(2) encompasses a peace officer's personal cellular telephone number, provided the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024).

You have marked personal information, and we have marked additional personal information, that pertains to officers with the department. If the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the marked information under subsection 552.117(a)(2) of the Government Code. Likewise, if the officers paid for their own cellular service, the department must withhold the officers' cellular telephone numbers you have marked, and the additional numbers we have marked, under subsection 552.117(a)(2) of the Government Code. If, however, the officers at issue are not currently licensed peace officers, their

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

personal information may not be withheld under subsection 552.117(a)(2) of the Government Code.

If the officers at issue are no longer licensed peace officers, then their personal information may be subject to subsection 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request 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)). Whether a particular item of information is protected by subsection 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 subsection 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. We note you have marked the telephone number of an individual who is not employed by the department. As such, the department may not withhold this information, which we have marked for release, under section 552.117. To the extent the remaining individuals whose information is at issue timely elected confidentiality under section 552.024, the department must withhold the personal information you have marked and the additional information we have marked under subsection 552.117(a)(1) of the Government Code. Similarly, if the individuals paid for their own cellular service, the department must withhold the marked cellular telephone numbers under subsection 552.117(a)(1) of the Government Code. If, however, the individuals whose information is at issue did not timely elect to keep their personal information confidential, their marked personal information, including the cellular telephone numbers, must be released.

You mark license plate numbers in the information at issue; thus, we understand you to raise section 552.130 of the Government Code for this information. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas, another state, or country is excepted from public release. 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(a)). We find the department must withhold the information you have marked under section 552.130 of the Government Code.

You mark an account number for lawn services in the information at issue; thus, we understand you to raise section 552.136 of the Government Code for this information. Section 552.136 states, "Notwithstanding any other provision of this chapter, 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). You provide no explanation as to how the account number you have marked constitutes an access device

number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* § 552.136(a) (defining “access device”). As such, the department may not withhold the information you have marked under section 552.136 of the Government Code.

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). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). We note some of the e-mail addresses you have marked fall under subsection 552.137(c), therefore, the department may not withhold these addresses, which we have marked for release. Accordingly, with the exception of the e-mail addresses we have marked for release, the department must withhold the e-mail addresses you have marked, as well as the additional e-mail addresses we have marked, under section 552.137 of the Government Code unless the owners of the addresses have affirmatively consented to their release under section 552.137(b). However, we note one of the remaining e-mail addresses you have marked is associated with a public university. If this individual is an employee of the university, then his e-mail address, which we have marked, is not excepted under section 552.137 and must be released. If this individual is a student of the university, then his e-mail address is excepted from disclosure under section 552.137 and must be withheld, unless the owner has consented to its release.

In summary: (1) the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the department must withhold the information you have marked under section 552.130 of the Government Code; (3) to the extent the officers whose information is at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the officers’ personal information you have marked and the additional information we have marked, if the officers paid for their own cellular service, under section 552.117(a)(2) of the Government Code; (4) with the exception of the information we have marked for release, to the extent the individuals whose information is at issue timely elected confidentiality, the department must withhold the personal information you have marked and the additional information we have marked, including the marked cellular telephone numbers, if the individuals paid for their own cellular service, under section 552.117(a)(1) of the Government Code; and (5) with the exception of what we have marked for release, the department must withhold the e-mail addresses you have marked and the additional e-mail addresses we have marked under section 552.137 of the Government Code unless their owners have consented to their

release.⁴ However, if the marked public university e-mail address we have marked belongs to an employee of the university, then the e-mail address we have marked is not excepted under section 552.137 and must be released. The department must release the remaining information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/dls

Ref: ID# 437762

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including: Texas license plate numbers under section 552.130(a)(2) of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code.