



ATTORNEY GENERAL OF TEXAS  
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January 30, 2012

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OR2012-01454

Ms. J. Middlebrooks

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# 443777 (DPD PIR# 2011-10228).

The City of Dallas (the "city") received a request for the employment application, personal history statement, pre-employment background investigator's report, internal affairs records, and public integrity records for a named police officer. You claim that portions of the submitted information are 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 representative sample of information.<sup>1</sup>

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 information that other statutes make confidential, such as section 1703.306 of the Occupations Code. This section provides:

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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.

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. You have marked information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code 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). 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 highly 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. However, this office has also determined in

numerous formal decisions that the public has a legitimate interest in the qualifications and performance of public employees. *See e.g.*, 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 (1987) (public has legitimate interest in job qualifications and performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). You have marked the information you seek to withhold under section 552.101 in conjunction with common-law privacy. Upon review, we find most of the information you marked, and the additional information we have marked, is highly intimate or embarrassing and of no legitimate concern to the public. However, we find you have failed to demonstrate that the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Accordingly, with the exception of this information, which we have marked for release, the city must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code exempts 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 held that 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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). You have marked the named police officer’s birth date. Accordingly, the city must withhold this information under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code exempts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information regarding a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.<sup>2</sup> Gov’t Code § 552.117(a)(2). Upon review, we find that most of the information you have marked, and the additional information we have marked, under section 552.117(a)(2) constitutes the personal information of the named police officer. We note, however, that section 552.117 does not make confidential an individual’s place of birth. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you marked and the additional information we marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a)(1). Upon review, the city must

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<sup>2</sup>We note “peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

withhold the driver's license information you have marked under section 552.130 of the Government Code.

In summary, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. With the exception of the information we marked for release, the city must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the birth date you marked under section 552.102(a) of the Government Code. With the exception of the information we marked for release, the city must withhold the information you marked and the additional information we marked under section 552.117(a)(2) of the Government Code. Finally, the city must withhold the driver's license information you marked under section 552.130 of the Government Code. The remaining information must be released.

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/agn

Ref: ID# 443777

Enc. Submitted documents

c: Requestor  
(w/o enclosures)