



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2012

Ms. Cara Leahy White
For City of Ovilla
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
For Worth, Texas 76107

OR2012-03902

Dear Ms. White:

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# 447834.

The City of Ovilla (the "city"), which you represent, received a request for information related to the requestor's application for employment with the city from a specified time period. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This exception encompasses federal and state laws that make criminal history record information ("CHRI") confidential. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas 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. Sections 411.083(b)(1) and 411.089(a)

authorize a criminal justice agency to obtain CHRI; however, 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-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes CHRI. Thus, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. However, we find no portion of the remaining information constitutes CHRI that is confidential under federal law or chapter 411, and the city may not withhold any of the remaining information at issue under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). Section 1701.454 provides as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

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

Occ. Code § 1701.454. The remaining information contains F-5 (“Report of Separation of Licensee”) reports, which do not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 reports pursuant to section 552.101 in conjunction with section 1701.454 of the Occupations 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.” Gov’t Code § 552.102(a). The Texas Supreme Court has considered the applicability of section 552.102, and 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.*, 354 S.W.3d 336, 347-48 (Tex. 2010). Upon review, we agree the submitted information

contains a date of birth subject to section 552.102. Accordingly, the city must withhold the information you have marked under section 552.102 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The city must withhold the submitted F-5 reports pursuant to section 552.101 in conjunction with section 1701.454 of the Occupations Code. The city must withhold the information you have marked under section 552.102 of the Government Code. The remaining information must be released.¹

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

¹We note the information being released includes the requestor's driver's license information, which is generally confidential under section 552.130 of the Government Code. Because this exception was enacted to protect a person's privacy, the requestor has a right of access to this information under section 552.023(a) of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). We note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Thus, if the city receives another request for this same information from a person who does not have such a right of access, section 552.130(c) of the Government Code authorizes the city to redact the requestor's driver's license information.

Ref: ID# 447834

Enc. Submitted documents

c: Requestor
(w/o enclosures)