



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2012

Mr. Ryan M. Stults
Assistant City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2012-04292

Dear Mr. Stults:

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# 448685.

The Missouri City Police Department (the "department") received a request for information pertaining to a named police officer, including information pertaining to the named officer's video and audio recording equipment during a specified time period. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.119, 552.130, 552.137, 552.147, and 552.152 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically consents to the redaction of home addresses, personal phone numbers, social security numbers, dates of birth, driver's license numbers, and license plate information. Thus, this information, which you have marked, is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release that information in response to the request. Accordingly, we need not address your arguments under sections 552.102 and 552.147 of the Government Code.

¹Although you raised sections 552.103, 552.108, 552.111, 552.122, and 552.136 of the Government Code in your initial letter dated January 17, 2012, you make no arguments to support these exceptions. Accordingly, we understand the department no longer asserts these exceptions. See Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

Section 552.101 of the Government Code exempts from public 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 other statutes make confidential, such as section 560.003 of the Government Code. Section 560.003 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). The submitted information contains the named officer’s fingerprints. There is no indication the requestor has a right of access to the fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Therefore, the department must withhold the fingerprints, which you have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

The responsive information also contains an L-3 Declaration of Psychological and Emotional Health form required by the Texas Commission on Law Enforcement Officers Standards and Education (“TCLEOSE”). This form is confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides the following:

(a) [TCLEOSE] may not issue a license to a person 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 blood test or other medical test.

(b) An agency hiring a person for whom a license 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). Therefore, the department must withhold the submitted L-3 declaration form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.²

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306(b) of the Occupations Code, without the necessity of requesting an attorney general decision.

Section 552.117(a)(2) of the Government Code exempts from public disclosure a peace officer's home address and telephone number, social security number, family member information, and emergency contact information, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2); *see also id.* § 552.024. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we find the department must withhold the named officer's personal information, which we have marked, under section 552.117(a)(2) of the Government Code.³

You argue portions of the remaining information are subject to section 552.119 of the Government Code, which provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Id. § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. Upon review of your arguments, we find you have not demonstrated, and it is not apparent from our review of the submitted information, that release of the photographs at issue would endanger the life or physical safety of the peace officer depicted. Therefore, the department may not withhold the information at issue under section 552.119 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. We note section 552.130 does not protect the state of issuance of a driver's license, which we have marked for release. Additionally, the department must withhold the responsive

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

motor vehicle record information, which we have marked, under section 552.130 of the Government Code.

Section 552.137 of the Government Code provides that “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 affirmatively consents to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Upon review, we find the e-mail addresses you have marked are not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to disclosure.

You raise section 552.152 of the Government Code for portions of the remaining information. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You inform us the information you have marked under section 552.152 relates to undercover police officers. You inform us release of this information would subject these officers to a threat of physical harm. Based on your representations and our review, we agree you have demonstrated release of the information at issue would subject the officers to a substantial threat of physical harm. Therefore, the department must withhold the information you have marked under section 552.152 of the Government Code.

In summary, the department must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the submitted L-3 declaration form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The department must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the responsive motor vehicle record information, which we have marked, under section 552.130 of the Government Code. Unless the owners affirmatively consent to disclosure, the department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. The department must withhold the information you have marked under section 552.152 of the Government Code. 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,

A handwritten signature in dark ink that reads "Cynthia G. Tynan". The signature is written in a cursive, flowing style.

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 448685

Enc. Submitted documents

c: Requestor
(w/o enclosures)