



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2012

Ms. Donna L. Johnson
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019-2133

OR2012-05901

Dear Ms. Johnson:

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# 451739 (Hempstead # COH12-001).

The Hempstead Police Department (the "department"), which you represent, received a request for a named police officer's personnel file. You state you have released some of the requested information. You state you will withhold the responsive L-2 declaration and military discharge records pursuant to Open Records Decision No. 684 (2009).¹ You also state you have redacted social security numbers under section 552.147 of the Government Code.² You claim portions of the remaining information are excepted from disclosure under sections 552.101, 552.102, 552.115, 552.117, and 552.130 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

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including L-2 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code and a DD-214 form under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.

²Section 552.147(b) 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 an attorney general decision under the Act. See Gov't Code § 552.147(b).

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. The types of information considered intimate and 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. *See id.* at 683. We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987) (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 or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, although some of the information may be highly intimate or embarrassing, we find there is a legitimate public interest in this information. Further, we find you have failed to demonstrate any portion of the remaining information is highly intimate or embarrassing. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not demonstrated how constitutional privacy applies to any portion of the remaining information. Accordingly, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.102(a) 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 recently 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 (Tex. 2010). Upon review, we find the department must withhold the information we have marked under section 552.102(a) of the Government Code. The

remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

Section 552.115(a) of the Government Code provides “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]” Gov’t Code § 552.115. Section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). The department is not the Bureau of Vital Statistics or a local registration official; therefore, the department may not withhold the submitted birth certificate under section 552.115.

You state the department will redact the information you have marked under section 552.117(a)(2) of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 670 (2001). Open Records Decision No. 670 authorizes the withholding of home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family information of peace officers, without the necessity of requesting an attorney general decision. In this instance, however, we note some of the information you have marked is not subject to section 552.117(a)(2) of the Government Code. Further, you failed to mark portions of the information that are subject to section 552.117(a)(2). Therefore, we will address the applicability of section 552.117 to the remaining information.

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175 of the Government Code. *See* Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We note post office boxes are not home addresses and are not protected under section 552.117(a)(2). *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home). Accordingly, we conclude the department must withhold the information we have marked under section 552.117(a)(2). We find the remaining information you seek to withhold is not subject to section 552.117(a)(2) and may not be withheld on that basis.

A portion of the remaining information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 provides in part:

(a) This section applies only to:

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). A portion of the remaining information may relate to an officer of another police department. Thus, to the extent the information at issue, which we have marked, relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. However, if the individual whose information is at issue is not currently a licensed peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

You state you will redact driver's license numbers under section 552.130 of the Government Code.⁴ We note portions of the remaining information are subject to section 552.130. Therefore, we will address the applicability of section 552.130 to the remaining information at issue.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find the department must withhold the driver's license information we have marked under section 552.130(a)(1) of the Government Code. The remaining information at issue does not consist of motor vehicle record information; therefore, the department may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.102(a) of the Government Code; the information we have marked under section 552.117(a)(2) of the Government Code; the information we marked under

⁴On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

section 552.1175 of the Government Code, if the information relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b); and the information we have marked under section 552.130(a)(1) 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, 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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/em

Ref: ID# 451739

Enc. Submitted documents

c: Requestor
(w/o enclosures)