ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2012

Ms. Elizabeth White
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2012-08276

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# 455174 (File No. 4396-001).

The City of Friendswood (the "city"), which you represent, received a request for the personnel file of a specified officer. We understand the city will redact a social security number pursuant to section 552.147(b) of the Government Code.[1] You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.114, and 552.117 of the Government Code.[2] We have considered the exceptions you claim and reviewed the submitted representative sample of information.[3]

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. Exhibit D consists of an L-2 Declaration of Medical Condition form

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[1]Section 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 a decision from this office under the Act. Gov't Code § 552.147(b).

[2]Although you also raise section 552.1175 of the Government Code as an exception to disclosure, we note section 552.117 is the proper exception to assert for information the city holds in an employment capacity.

[3]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.

required by the Texas Commission on Law Enforcement Officers Standards and Education ("TCLEOSE"). This form is subject to section 1701.306 of the Occupations Code, which is encompassed by section 552.101 of the Government Code. Section 1701.306 provides:

> (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). Thus, the city must withhold exhibit D, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.[4] However, we find exhibit B is not subject to section 1701.306 of the Occupations Code. Accordingly, the city may not withhold exhibit B under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

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 considered the applicability of section 552.102 and 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 find exhibit A-1 contains a date of birth subject to section 552.102, which we have marked. Accordingly, the city must withhold the information we have marked under section 552.102 of the Government Code. However, we find exhibit C is not subject to section 552.102(a), and the city may not withhold exhibit C on that basis.

You raise section 552.114 as an exception to disclosure of exhibit B. Section 552.114(a) of the Government Code excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). You contend exhibit B is confidential under section 552.114. However, we note the city is not an educational

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[4]As our ruling with regard to this information is dispositive, we do not address your remaining arguments against its disclosure.

institution funded wholly or partly by state revenue. We therefore conclude the city may not withhold exhibit B on the basis of section 552.114 of the Government Code.

Section 552.117(a)(2) excepts from public 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 peace officer has family members, regardless of whether the peace officer complies with section 552.024 of the Government Code or section 552.1175 of the Government Code.[5] Gov't Code § 552.117(a)(2). Exhibit A-1 contains information subject to section 552.117(a)(2), which we have marked. The city must withhold the information we have marked under section 552.117(a)(2).

In summary, the city must withhold exhibit D under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The city must withhold the information we have marked in exhibit A-1 under sections 552.102 and 552.117(a)(2) 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,

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 455174

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[5]"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.