



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 12, 2012

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2012-10784

Dear Ms. Armstrong:

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# 458611 (ORR No. 2012-04581).

The Dallas Police Department (the "department") received a request for all records related to Internal Affairs Control Number 2011-407. You claim some of the submitted information is excepted from disclosure pursuant to sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you state some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-00932 (2012). In that ruling, we concluded the department may not withhold any of the information at issue under section 552.108 of the Government Code. We further concluded the department must withhold the marked personal information under section 552.117(a)(2) of the Government Code, unless the individual whose information is marked is no longer a

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<sup>1</sup>We assume the "representative sample" of information 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 that those records contain substantially different types of information than that submitted to this office.

licensed peace officer; if the individual is no longer a licensed peace officer but made a timely election under section 552.024 of the Government Code, we found the department must withhold the marked personal information under section 552.117(a)(1) of the Government Code. In addition, we found the department must withhold the information we marked under sections 552.102 and 552.130 of the Government Code and must release the remaining information at issue. You again seek to withhold the information at issue under section 552.108 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the department may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. Although you raise section 552.108 for the information we previously ordered released, section 552.108 does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, pursuant to section 552.007, the department may not now withhold the information that was previously rule upon under section 552.108. As we have no indication the law, facts, and circumstances on which Open Records Letter No. 2012-00932 was based have changed, we conclude the department must continue to rely on Open Records Letter No. 2012-00932 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments against disclosure of the information that was not encompassed by the previous ruling.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and did not involve the criminal investigation or prosecution of an officer's alleged misconduct. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation

that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.) (section 552.108 not applicable to information police department holds as employer); Open Records Decision No. 350 at 3-4 (1982). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information).

You state the information you have marked relates to a “pending investigation/prosecution of an alleged offense.” However, the submitted information consists of the department’s administrative investigation of alleged criminal conduct that occurred in Rowlett, Texas and was investigated by the Rowlett Police Department and information related to the criminal investigation conducted by the Rowlett Police Department. You have not explained how the department’s administrative investigation pertains to any criminal matter pending with the department. Furthermore, you have not provided a representation from the Rowlett Police Department or any other law enforcement entity asking the department, as proper custodian of information relating to alleged criminal conduct, to withhold the information because its release would interfere with a pending investigation or prosecution. Therefore, the department may not withhold the marked information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with [the Family Code] and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Although you contend some of the submitted information is confidential under section 261.201, we find this information does not consist of either a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family

Code or information used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We therefore conclude the department may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 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 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. However, section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find the information we have marked consists of CHRI the department must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered 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. *See id.* at 683. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected

by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include choice of particular insurance carrier), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find some of the submitted information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts 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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, the department must withhold the personal information you have marked, and the information we have marked, under section 552.117(a)(2) of the Government Code, unless the individuals whose information is marked are no longer licensed peace officers.

If the individuals are no longer licensed peace officers, their personal information may be excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone numbers, social security number, family member information, and emergency contact information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department may only withhold personal information under section 552.117(a)(1) if the individual elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals are no longer licensed peace officers but made timely elections under section 552.024, the department must withhold the personal information you have marked, and the information we have marked, under section 552.117(a)(1). If the individuals are no longer licensed peace officers and did not make timely elections under section 552.024, their personal information may not be withheld under section 552.117(a)(1) of the Government Code.<sup>2</sup>

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<sup>2</sup>Regardless of the applicability of section 552.117, section 552.147(b) of the Government Code authorizes a governmental body to redact the social security number of a living person without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

We note portions of the submitted information are subject to sections 552.102, 552.130, and 552.136 of the Government Code.<sup>3</sup> 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 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). Having carefully reviewed the information at issue, we find the department must withhold the information we have marked under section 552.102(a) of the Government Code.

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 determine the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Finally, section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Therefore, the department must withhold the information we have marked pursuant to section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the marked personal information under section 552.117(a)(2) of the Government Code, unless the individuals whose information is marked are no longer licensed peace officers. If the individuals are no longer licensed peace officers but made timely elections under section 552.024, the department must withhold the marked personal information under section 552.117(a)(1) of the Government Code. If the individuals are no longer licensed peace officers and did not make timely elections under section 552.024, their personal information may not be withheld under section 552.117(a)(1) of the Government Code. The department must also withhold the information we have marked under sections 552.102(a), 552.130, and 552.136 of the Government Code. The remaining information must be released.

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 458611

Enc. Submitted documents

c: Requestor  
(w/o enclosures)