



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2012

Mr. Timothy B. Kirwin  
Counsel for the City of Fulshear  
Randle Law Office Ltd., L.L.P.  
820 Gessner, Suite 1570  
Houston, Texas 77024-4494

OR2012-16598

Dear Mr. Kirwin:

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# 470783.

The City of Fulshear (the "city"), which you represent, received a request for the personnel file of a named former police officer. You state the city has released some information to the requestor. You also state the city has withheld some information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You further state the city has redacted certain information subject to section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code, and section 552.1175 of the Government Code as permitted by

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<sup>1</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, and a copy of a Texas driver's license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on 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. 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). *Id.* § 552.130(d), (e). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

section 552.1175(f).<sup>2</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-07576 (2012). In that ruling, we determined the city (1) must withhold the marked F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (2) may only release the marked medical records pursuant to the Medical Practices Act (the "MPA"), subtitle B of title 3 of the Occupations Code; (3) must withhold the information we marked under section 552.101 in conjunction with common-law privacy; (4) must withhold the marked dates of birth under section 552.102 of the Government Code; (5) must withhold the information we marked under section 552.117(a)(2) of the Government Code; (6) must withhold the information we marked under section 552.1175 of the Government Code to the extent any of the officers at issue elected to restrict access to their information in accordance with section 552.1175(b); (7) must withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and (8) must release the remaining information. Therefore, to the extent the submitted information is identical to the information previously requested and ruled upon in Open Records Letter No. 2012-07576, we conclude the city must continue to rely upon this ruling with regard to the previously submitted information subject to (1) section 552.101 of the Government Code in conjunction with 1701.454 of the Occupations Code and common-law privacy, (2) the MPA, and (3) sections 552.102, 552.1175, and 552.130 of the Government Code. *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, you now inform us the named individual at issue is no longer employed by the city's police department. Therefore, the facts or circumstances on which the previous ruling were based have changed with regard to the information the city previously withheld under section 552.117(a)(2). Accordingly, the city may no longer rely on Open Records Letter No. 2012-07576 with regard to the information previously withheld under section 552.117(a)(2). Accordingly, we will consider the city's arguments against disclosure of this information, as well as its arguments against disclosure of the submitted information not subject to Open Records Letter No. 2012-07576.

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<sup>2</sup>Section 552.024 of the Government Code permits a governmental body to redact certain personal information subject to section 552.117 of the Government Code without the necessity of requesting a decision from this office. *See* Gov't Code § 552.024(c). Likewise, section 552.1175 of the Government Code permits a governmental body to redact certain personal information without seeking a ruling from this office. *See id.* Code § 552.1175(f).

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 section encompasses information protected by other statutes, including section 1703.306 of the Occupations Code, which provides the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person that requested the examination;

(3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. The submitted information contains polygraph information that is confidential under section 1703.306, and the requestor does not appear to have a right of access to the information under that section. Accordingly, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which 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 established. *See id.* at 681-82. This office has found some kinds of medical

information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

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.”<sup>3</sup> 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). Upon review, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information we have marked is still a licensed peace officer, the city must withhold the information we have marked under section 552.117(a)(2).

If the individual concerned is no longer a licensed peace officer, the marked information may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). 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). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under

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

section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the information we have marked must be withheld under section 552.117(a)(1). The city may not withhold the marked information under section 552.117(a)(1) if the individual did not make a timely election to keep the information confidential.<sup>4</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find the city must withhold the driver's license number we have marked in the remaining information under section 552.130.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon in Open Records Letter No. 2012-07576, we conclude the city must continue to rely upon this ruling with regard to the previously submitted information subject to (1) section 552.101 of the Government Code in conjunction with 1701.454 of the Occupations Code and common-law privacy, (2) the MPA, and (3) sections 552.102, 552.1175, and 552.130 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.102(a) of the Government Code. If the individual whose information we have marked is still a licensed peace officer, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual concerned is no longer a licensed peace officer and timely requested confidentiality pursuant to section 552.024 of the Government Code, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code. The city must withhold the driver's license number we have marked under section 552.130 of the Government Code. The city 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

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<sup>4</sup>Regardless of the applicability of section 552.117 of the Government Code, we note 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. See Gov't Code § 552.147(b).

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 470783

Enc. Submitted documents

c: Requestor  
(w/o enclosures)