



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2013

Ms. L. Carolyn Nivens
Paralegal
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2013-02205

Dear Ms. Nivens:

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# 478232 (City Ref. No: W002148-110812; Ross Banks File No. 4396-001).

The City of Friendswood (the "city"), which you represent, received a request for the personnel files of four named city police officers. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.122, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excludes social security numbers from his request. Accordingly, the submitted social security numbers are not responsive to the instant request for information. This ruling does not address the public availability of the non-responsive information, and the city is not required to release such information in response to this request.

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. Section 552.101 encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which protects juvenile law enforcement records related to delinquent conduct and conduct indicating a need for

supervision that occurred on or after September 1, 1997. Section 58.007 provides, in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), a “child” is a person who was ten years of age or older and under seventeen years of age at the time the conduct occurred. *Id.* § 51.02(2). Upon review, we find the information we have marked involves a juvenile engaged in conduct indicating a need of supervision that occurred after September 1, 1997. *See id.* § 51.03(b) (defining “conduct indicating a need for supervision”). It does not appear any of the exceptions in section 58.007 apply. Therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1703.306(a) of the Occupations Code, which provides “[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[.]” Upon review, we find you have not established any portion of the remaining information consists of information acquired from a polygraph examination. Thus, we conclude you have failed to establish any portion of the remaining information is confidential under section 1703.306, and the city may not withhold it under section 552.101 on that ground.

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). Additionally, this office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 455 at 9 (1987) (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). Additionally, this office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Determinations under common-law privacy must be made on a case-by-case basis. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); Open Records Decision No. 373 at 4 (1983). However, information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information). Additionally, we note criminal history information obtained by a law enforcement agency in the process of hiring a peace officer is a matter of legitimate public interest. We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (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 of public employees), 423 at 2 (scope of public employee privacy is narrow).

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, we find the remaining information is either not highly intimate or embarrassing or is of legitimate concern to the public. Consequently, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

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. 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. Accordingly, we find the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, no portion of the remaining information is subject to section 552.117(a)(2). Accordingly, no portion of the remaining information may be withheld on that basis.

Section 552.1175 of the Government Code provides, in part, the following:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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.

Id. § 552.1175(b). The remaining information contains information pertaining to peace officers not employed by the city's police department. Accordingly, we find the city must withhold the information we have marked under section 552.1175 if the individuals to whom this information concerns elect to restrict access to their information in accordance with section 552.1175(b). However, no portion of the remaining information is subject to section 552.1175. Accordingly, no portion of the remaining information may be withheld on that basis.

Section 552.122 of the Government Code excepts from public disclosure "a test item developed by a . . . governmental body [.]" *Id.* § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. Open Record Decision No. 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Upon review, we find the information you seek to withhold evaluates the applicants' individual experience and abilities, professional opinions, and subjective abilities to respond to particular situations and does not test any specific knowledge of an

applicant. Thus, you have failed to demonstrate the applicability of section 552.122 of the Government Code to any of the information at issue, and the city may not withhold it on that basis.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. However, no portion of the remaining information consists of a credit card, debit card, charge card, or access device number that is subject to section 552.136. Accordingly, no portion of the remaining information may be withheld on that basis.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address provided to a governmental body on a letterhead or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.¹ However, we note the remaining e-mail addresses are either provided to the city on a letterhead or are governmental body e-mail addresses; thus, the remaining e-mail addresses may not be withheld under section 552.137.

In summary, the city must withhold the information we have marked under (1) section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, (2) section 552.101 of the Government Code in conjunction with common-law privacy, (3) section 552.117(a)(2) of the Government Code, (4) section 552.1175 of the

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code if the individuals to whom this information concerns elect to restrict access to their information in accordance with section 552.1175(b), (5) sections 552.130 and 552.136 of the Government Code, and (6) section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their public disclosure. 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/tch

Ref: ID# 478232

Enc. Submitted documents

c: Requestor
(w/o enclosures)