



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2013

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

OR2013-02812

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# 479334 (City's Ref. No. W00002180-112612; Ross Banks File No. 4396-001).

The Friendswood Police Department (the "department"), which you represent, received a request for a named officer's personnel file. You state the department has released some of the requested information but claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information you have submitted to us for review is not responsive to the request for information because the requestor specifically excluded it from his request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information, which we have marked, in response to this request.² *See Econ.*

¹Although you also raise section 552.023 of the Government Code, we note section 552.023 is not an exception to disclosure under the Act. *See* Gov't Code § 552.023.

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

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 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. *Id.* at 683. However, addresses of members of the public are not excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 551 at 3 (1990) (disclosure of person’s name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers and dates of birth not protected under privacy). Upon review, we find you have failed to establish any of the information at issue is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the department may not withhold it under section 552.101 in conjunction with common-law privacy.

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.³ 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 has 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 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 home addresses, home telephone numbers, 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 or section 552.1175 of the Government Code.⁴ Gov’t Code § 552.117(a)(2). Upon review, we find none of the submitted responsive information consists of the home address, home

³The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

⁴“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

telephone number, emergency contact information, social security number, or family member information of the officer at issue. Therefore, none of the responsive information is excepted from disclosure under section 552.117 of the Government Code.

Section 552.1175(b) 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 submitted documents contain information pertaining to officers who do not work for the department. Therefore, if these individuals are currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information, which we have marked, under section 552.1175. However, you have failed to establish section 552.1175 is applicable to any of the remaining responsive information, and the department may not withhold it from release on that ground.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Id. § 552.130(a). The department must withhold the responsive motor vehicle record information we have marked under section 552.130.

Section 552.136 provides the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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.

Gov't Code § 552.136. You seek to withhold an employee code number and an internal accounting number under section 552.136. However, you have not explained how these types of numbers consist of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, you have failed to demonstrate the applicability of section 552.136 to these numbers, and the department may not withhold them from release on that ground.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

To conclude, the department is not required to release the submitted non-responsive information we have marked in response to this request. The department must withhold the information we have marked under sections 552.102(a) and 552.130 of the Government Code. The department must also withhold the information we have marked under section 552.1175 of the Government Code if the individuals at issue are currently licensed

peace officers who elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The department must release the remaining responsive information but may only release any copyrighted information in accordance with copyright law.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 479334

Enc. Submitted documents

c: Requestor
(w/o enclosures)