



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 29, 2014

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

OR2014-01743

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# 512313 (Seabrook File No. 3957-8/J).

The City of Seabrook (the "city") received a request for audio and video recordings pertaining to a specified traffic stop and traffic citation and the personnel file of a named city police officer, including any disciplinary records. You state the city will release some of the requested information with the redaction of certain information under sections 552.130(c) and 552.136(c) of the Government Code and Open Records Decision Numbers 684 (2009) and 670 (2001).<sup>1</sup> You claim some of the submitted information is excepted from disclosure

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including: a Form 1-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; W-2 and W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code; direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy; and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. You state you will redact driver's license numbers and access device numbers pursuant to Open Records Decision No. 684. However, the Texas legislature has amended section 552.130 of the Government Code to allow a governmental body to redact the information described in subsection 552.130(a)(1) 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). *See id.* § 552.130(d), (e). Further, the Texas legislature amended section 552.136 of the Government Code to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to sections 552.130 and 552.136 of the Government Code

under sections 552.101, 552.102, 552.108, 552.117, 552.119, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends the city has not released portions of the requested information. The city states it will release most of the requested information. Whether the city actually provided the information at issue to the requestor is a question of fact. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See Open Records Decision No. 522 at 4* (1990). Thus, we assume the city has released to the requestor any responsive information for which the city is not claiming an exception. If not, the city must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664* (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we address the requestor's contention that the city failed to timely request a ruling. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(b)*. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The requestor contends that she made a previous request for, in part, audio and video recordings pertaining to a specified traffic stop and traffic citation on October 7, 2013. Whether the requestor made a proper request for the information at issue to the city on October 7, 2013, is a question of fact. As previously noted, this office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See ORD 522 at 4*. The city represents it received the instant request on October 28, 2013. Thus, the city's ten-business day deadline was November 12, 2013, and the city's fifteen-business-day deadline was November 19, 2013. The city asked for a decision from this office and submitted the information required by section 552.301(e) on November 11, 2013. Accordingly, based on the city's representations and our review of the

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supercede Open Records Decision No. 684. Therefore, a governmental body may only redact information subject to subsection 552.130(a)(1) and subsection 552.136(b) in accordance with subsections 552.130(c) and 552.136(c) respectively, not Open Records Decision No. 684.

submitted documentation, we find the city complied with section 552.301 of the Government Code in requesting this decision, and we will consider its claims for the information at issue.

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 exception encompasses information other statutes make confidential. Federal tax return information is confidential under section 6103 of title 26 of the United States Code. For purposes of section 6103, "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2); *see also* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Upon review, we find the city must withhold the W-2 and W-4 forms we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." Gov't Code. § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). We have marked the submitted fingerprints. You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the marked fingerprint information in this instance. Therefore, the city must withhold the information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 143.089 of the Local Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257 (2000). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a

supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113,122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or are in the possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex.App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See* 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to “information reasonably related to a police officer's or fire fighter's employment relationship”); Attorney General Opinion JC-0257 at 6-7(addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the information submitted as Exhibit A is maintained only in the city police department's internal personnel file for the named officer under section 143.089(g). You state the information at issue includes an internal affairs investigation that did not result in disciplinary actions against the named officer. Based on your representations, we find Exhibit A is confidential under section 143.089(g) of the Local Government Code and must

be withheld under section 552.101 of the Government Code. You also seek to withhold portions of the remaining information under section 552.101 on the basis of section 143.089(g). However, you state the information at issue is contained in the officer's section 143.089(a) civil service file. You do not state the information at issue is contained in the officer's section 143.089(g) departmental file. Accordingly, we find you have failed to demonstrate section 143.089(g) is applicable to the remaining information you seek to withhold, and it may not be withheld on under section 552.101 on the basis of section 143.089(g).

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"). Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. However, none of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which provides:

(a) [Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE")] may not issue a license to a person as an officer or county jailer 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 physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer 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.

*Id.* § 1701.306(a), (b). Upon review, we find no portion of the remaining information is confidential pursuant to section 1701.306, and the city may not withhold any of the remaining information at issue on that basis under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCLEOSE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release information submitted under this subchapter.

*Id.* § 1701.454. The remaining information includes an F-5 form that was submitted to TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the F-5 form we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

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). The city must withhold the dates of

birth we have marked in the remaining information under section 552.102(a) of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and 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). This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and handicaps). However, we note the public generally has a legitimate interest in public employment and public employees, particularly those who are involved in law enforcement. *See* Open Records Decision No. 444 at 6 (1986) (public has genuine interest in information concerning law enforcement employee's qualifications and performance and circumstances of his termination or resignation); *see also* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs).

Upon review, we agree the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. 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 not highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>2</sup>As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit C pertains to a traffic stop and “[t]he incident made the basis of the traffic stop did not result in any convictions or deferred adjudications, but rather a citation for a traffic violation.” However, you do not inform us this case relates to a closed criminal investigation and do not explain the disposition of the citation. Thus, we conclude the city has failed to demonstrate the applicability of section 552.108(a)(2) to Exhibit C. Therefore, the city may not withhold Exhibit C under section 552.108.

Section 552.117(a)(2) of the Government Code exempts from disclosure the home address, home telephone number, social security number, emergency contact information, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See id.* § 552.117(a)(2); Open Records Decision No. 622 (1994). Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, none of the remaining information consists of the home address, home telephone number, social security number, emergency contact information, and family member information of a peace officer. Therefore, the city may not withhold any of the remaining information under section 552.117(a)(2).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle 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). Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 states “[n]otwithstanding 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.” *Id.* § 552.136. This office has determined an insurance policy number is an access device for the purposes of section 552.136. Accordingly, we find the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code and section 560.003 of the Government Code. The city must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the information we have marked under section 552.102(a) of the Government 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 sections 552.117(a)(2), 552.130, and 552.136 of the Government Code. The remaining information must be released.<sup>3</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 512313

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note the information being released contains the license plate number of a motor vehicle owned by the requestor. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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). *See id.* § 552.130(d), (e). Accordingly, if the city receives a request for the information being released from a different requestor, the city may withhold the requestor's license plate number under section 552.130(c) of the Government Code without the necessity of seeking a decision.