



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 23, 2014

Ms. Linda Rhodes  
City Secretary  
City of Lake Worth  
3805 Adam Grubb  
Lake Worth, Texas 76135

OR2014-06690

Dear Ms. Rhodes:

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# 520368.

The Lake Worth Police Department (the "department") received four requests from the same requestor for any and all records pertaining to four named department officers. You state you have released some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

<sup>2</sup>We assume that the "representative sample" of records 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.

Initially, you note the submitted information contains officers' Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") personal identification numbers. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand a TCLEOSE personal identification number is a unique computer-generated number assigned to peace officers for identification in TCLEOSE's electronic database, and may be used as an access device number on TCLEOSE's website. Accordingly, TCLEOSE personal identification numbers do not constitute public information under section 552.002 of the Government Code. Thus, the submitted TCLEOSE personal identification numbers are not subject to the Act and need not be released to the requestor.

Next, we must address the department's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a 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). You state the department received the request for information on January 29, 2014. Thus, the department was required to request a decision from this office by February 12, 2014. However, the envelope in which you submitted the information under section 552.301(b) bears a post meter mark of February 13, 2014. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the department failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because the department's claims under sections 552.117, 552.1175, 552.130, 552.136, and 552.137 can provide compelling reasons for non-disclosure, we will address the department's arguments under these exceptions.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>3</sup> Gov't Code § 552.101. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the department must withhold the W-4 forms we have marked pursuant to section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses section 301.081 of the Labor Code, which governs the release of employment information held by the Texas Workforce Commission (the "commission"). Section 301.081 provides in pertinent part as follows:

- (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
- (b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
- (c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.

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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. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Labor Code § 301.081(a)-(c). The submitted documents reflect that the department obtained certain employment information from the commission. Records that are confidential in the hands of the originating governmental body remain confidential when transferred to another governmental body. *See* Open Records Decision Nos. 674 at 4 (2001), 667 at 4 (2000); *see also* Attorney General Opinion H-836 (1976) (governmental bodies have need to maintain unrestricted flow of information, to effectuate state policy that governmental bodies cooperate in the efficient and economical administration of statutory duties). Accordingly, the submitted wage verification notice is confidential under section 301.081 of the Labor Code while in the custody of the commission. Section 301.081 does not prevent transfer of the information to the department. Thus, pursuant to the intergovernmental transfer doctrine, we conclude the wage verification notice we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *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 also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy); 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information); 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 the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code 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." 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, 348 (Tex. 2010). Upon review, we find the department must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

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, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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. We note section 552.117(a)(2) encompasses an employee's cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). The information at issue consists of the personal information and cellular telephone number of individuals currently or formerly employed by the department. In this instance, however, it is unclear whether some of the individuals at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, if the individuals at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the department must withhold the marked cellular telephone numbers only if a governmental body did not pay for the service. If the individuals at issue are no longer licensed peace officers as defined by article 2.12, the department may not withhold the information at issue under section 552.117(a)(2) of the Government Code.<sup>4</sup>

If the individuals whose information is at issue are currently not licensed peace officers, then the personal information we have marked may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member 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. Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. If the individuals at issue made a timely election under section 552.024, the department must withhold the information we have marked under section 552.117(a)(1). If the individuals at

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<sup>4</sup>We note a governmental body may withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001).

issue did not make a timely election under section 552.024, this information may not be withheld under section 552.117(a)(1).<sup>5</sup>

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, date of birth, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also applies to "employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]" *Id.* § 552.1175(a)(5). Upon review, we find the department must withhold the information we have marked under section 552.1175 if the individuals whose information is at issue are individuals described by section 552.1175(a), and they elect to restrict access to their information in accordance with section 552.1175(b). If these individuals are not individuals described by section 552.1175(a), or no elections are made, the department may not withhold the individuals' information under section 552.1175.<sup>6</sup>

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, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>7</sup>

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. Accordingly, the department

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<sup>5</sup>If the employees did not make a timely confidentiality election under section 552.024, we note section 552.147(b) of the Government Code permits a governmental body to withhold a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

<sup>6</sup>Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, and family member information of certain individuals who properly elect to keep this information confidential. *See* Gov't Code § 552.1175(b), (f).

<sup>7</sup>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).

must withhold the information we have marked under section 552.136 of the Government Code.<sup>8</sup>

Section 552.137 of the Government Code 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). *Id.* § 552.137(a)-(c). The submitted information contains a personal e-mail address that is not a type excluded by subsection (c). Therefore, the department must withhold the personal e-mail address we have marked under section 552.137 of the Government Code unless the owner affirmatively consents to its disclosure.

Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). The department came into possession of the submitted military discharge record after September 1, 2003. Accordingly, we conclude the department must withhold the military discharge record we have marked under section 552.140 of the Government Code.

In summary, the submitted TCLEOSE personal identification numbers are not subject to the Act and need not be released. The department must withhold under section 552.101 of the Government Code: (1) the W-4 forms we have marked in conjunction with section 6103(a) of title 26 of the United States Code; (2) the wage verification notice we have marked in conjunction with section 301.081 of the Labor Code; and (3) the information we have marked in conjunction with common-law privacy. The department must also withhold (1) the dates of birth we have marked under section 552.102(a) of the Government Code; (2) the information we have marked under section 552.117(a)(2) of the Government Code if the individuals are licensed peace officers; however, the marked cellular telephone numbers may only be withheld if the cellular telephone service is not paid for by a governmental body; (3) the information we have marked under section 552.117(a)(1) of the Government Code if the individuals are no longer licensed, to the extent the information we have marked pertains to individuals who made a timely election under section 552.024; (4) the information we have marked under section 552.1175 of the Government Code, to the extent the information we have marked pertains to individuals described by section 552.1175(a), who choose to restrict public access to their information in accordance with section 552.1175(b); (5) the motor vehicle record information we have marked under

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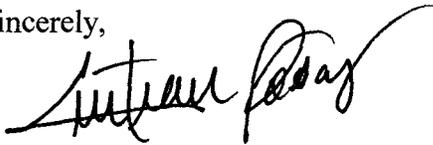
<sup>8</sup>Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

section 552.130 of the Government Code; (6) the information we have marked under section 552.136 of the Government Code; (7) the personal e-mail address we have marked under section 552.137 of the Government Code unless the owner affirmatively consents to its disclosure; and (8) the military discharge record we have marked under section 552.140 of the Government Code.<sup>9</sup> The department must release the remaining responsive 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 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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 520368

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>9</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including 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 direct deposit form under section 552.101 of the Government Code in conjunction with common-law privacy, an e-mail address of a member of the public under section 552.137 of the Government Code, and a DD-214 form under section 552.140 of the Government Code, without the necessity of requesting a decision from this office.