



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 22, 1996

Ms. Elizabeth Elam
Fielding, Barrett & Taylor, L.L.P.
3400 Bank One Tower
500 Throckmorton Street
Fort Worth, Texas 76102-3821

OR96-0590

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38670.

The City of Burleson (the "city"), which you represent, has received a request for information relating to a Burleson Police Department employee. You state that most of the requested information is public and either has or will be provided to the requestor. However, you claim that certain documents and the marked portions of other documents submitted for our review may be protected from required public disclosure under sections 552.101 and 552.117 of the Government Code.

We first address your assertion that some of the requested information is excepted from required public disclosure under section 552.117(2) of the Government Code. Section 552.117(2) requires that the city withhold its peace officers' home addresses, telephone numbers, and social security numbers, and information that reveals whether the peace officer has family members. We find that the individual to whom the request relates is a peace officer as defined by Article 2.12, Code of Criminal Procedure, and, consequently, the city may withhold, pursuant to section 552.117(2), all the information you have marked, with the exception of the employee's driver's license number, which reveals this information.¹

¹You also contend that the employee's social security number may be excepted from required public disclosure pursuant to federal law. Although a social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal

We next address your assertion that some of the requested information is excepted from required public disclosure under section 552.101 in conjunction with the common-law right of privacy and various statutes. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

With regard to the information you seek to withhold under section 552.101 and the common-law right of privacy, for information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 343 (1982) (information revealing that a particular individual suffers from severe emotional or mental distress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987); and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). After reviewing the documents, we conclude that all of the information you have marked, with the exception of the employee's birth certificate, is highly intimate and embarrassing, is of no legitimate public interest, and must be withheld under constitutional or common-law privacy. The employee's birth certificate must be released to the requestor.

Financial information concerning an individual may also be protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). You have submitted to this office documentation regarding optional insurance coverage, accumulated deposits in the Texas Municipal Retirement System, a request for verification of employment from a mortgage company, a payroll deduction authorization, memoranda regarding direct deposit of payroll checks, enrollment forms in a deferred compensation plan, personal data forms for the Texas Municipal Retirement System, and

(Footnote continued)

Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990, *see* Open Records Decision No. 622 (1994), we do not address this provision of federal law because this information already must be withheld under section 552.117(2).

the financial history section of the employee's job application. Each of these items relate to personal investment decisions, personal financial information, and personal decisions relating to optional insurance coverage of an employee which this office has previously held is excepted under a common-law right to privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Therefore, these items must be withheld under section 552.101 of the Government Code. You have also submitted the employee's W-4 forms which are confidential under federal law and, therefore, also must be withheld. 26 U.S.C. § 6103; *see also* Open Records Decision No. 600 (1992) at 8-9.

You also contend that certain medical reports, a psychological report, and a medical history are protected from disclosure pursuant to the provisions of title I of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. § 12101 et seq. Information is confidential by law when it is made confidential by federal statute or administrative regulations enacted pursuant to statutory authority. Open Records Decision No. 476 (1987) at 5. The ADA provides that information about medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as confidential medical records. Since the information on these forms is made confidential under the ADA, it may be released only as provided under that section.

The files submitted to us for review also include criminal history record information ("CHRI") that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, *see* Open Records Decision No. 565 (1990), and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. In addition, as for CHRI generated within Texas, common-law privacy prohibits the disclosure of such information to anyone other than the subject of the information. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 188 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 616 (1993),

565 (1990). Each of the documents you have marked which contain CHRI must be withheld from public disclosure under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 38670

Enclosures: Marked documents

cc: Ms. Cheryl Lowery
921 B Summercrest
Burleson, Texas 76028
(w/o enclosures)