



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 13, 1996

Ms. Mercedes Leal  
Senior Assistant County Attorney  
1001 Preston, Suite 634  
Houston, Texas 77002-1891

OR96-1438

Dear Ms. Leal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100483.

Harris County (the "county") received a request for all information regarding a certain peace officer employed by the county. You state that most of the requested information will be released to the requestor. You claim, however, that some of the information contained within the officer's personnel file is excepted from required public disclosure by sections 552.101, 552.102, 552.108, 552.115, and 552.117 of the Government Code. In your request for a decision, you have submitted the material you seek to withhold as Exhibits 2 through 5. We have considered the exceptions you claimed and have reviewed the documents at issue.

Under Exhibit 2, you seek to withhold the officer's birth certificate pursuant to section 552.115. Section 552.115, however, applies to a "birth or death record maintained by the bureau of vital statistics of the Texas Department of Health." The record here does not appear to be maintained by the Department of Public Health. Thus, we do not believe that the county may withhold the birth certificate under section 552.115. *See* Open Records Decision 338 (1982) (city health department may not withhold birth records); *cf.* Open Records Decision Nos. 486 (1987), 307 (1982)(county clerk may not withhold birth records).

However, we note that some of the information on the record is protected by section 552.117. Section 552.117 provides that information may be withheld if it is

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

\* \* \* \*

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

Since Section 552.117 excepts from required disclosure peace officers' home addresses, home telephone numbers, social security numbers, and information revealing whether the officers have family members, this information must be withheld from disclosure. Code Crim. Proc. art. 2.12(2) (deputy constables are "peace officers"); Open Records Decision Nos. 532 (1989), 530 (1989). We have marked the information on the birth record that must be withheld.

You next argue that Exhibit 3 and a specifically marked document in Exhibit 5, which contain a search for criminal history record information ("CHRI"), are protected from disclosure by sections 552.102 and 552.108. You state that the information was obtained from federal and state authorities. We note that such information is generally confidential and not subject to disclosure pursuant to section 552.101. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Furthermore, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We, therefore, conclude that the department must withhold from required public disclosure the criminal history information under section 552.101 of the Government Code. *See id.*; *see also* Gov't Code § 411.106(b). Because we are able to make this determination under section 552.101, we do not address your arguments against disclosure.

As for Exhibit 4, you argue that the information is protected from disclosure by sections 552.101, 552.102, and 552.117. The information at issue in Exhibit 3 consists of the officer's personal financial information. Section 552.102 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, 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. After reviewing the submitted documents in Exhibit 4, we conclude that they may be withheld pursuant to section 552.101. Open Records Decision Nos. 600 (1992) (retirement system forms, direct deposit authorization, withholding allowance certificates), 545 (1990) (personal financial information).

Lastly, you argue that certain categories of information in Exhibit 5 are protected from disclosure by sections 552.101, 552.102, 552.108 and 552.117. You state that the information you seek to withhold consists of personal financial information; and the peace officers’ home addresses, home telephone numbers, social security numbers, and information revealing whether the officers have family members. You have highlighted those parts of the documents you seek to withhold. As outlined above, we conclude that you must withhold this information from disclosure pursuant to common law privacy and section 552.117.

In addition to the information you have highlighted, we have marked other information that you must withhold under sections 552.101 and 552.117. The former home addresses and telephone numbers of peace officers are excepted from required public disclosure under section 552.117. *See* Open Records Decision No. 622 (1994). We also note that one of the documents in Exhibit 5 is an Employment Eligibility Verification, Form I-9.<sup>1</sup> Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Open Records Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential under section 552.101 of the Open Records Act and may only be released in compliance with the federal laws and regulations governing the employment verification system.

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<sup>1</sup>We note that you did not claim any exception for this document. However, this office will raise section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 should 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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 100483

Enclosures: Marked documents

cc: Mr. J.M. "John" Castillo, C.I.S.  
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(w/o enclosures)