



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 12, 1997

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City Hall
Dallas, Texas 75201

OR97-1370

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106666.

The City of Dallas (the "city") received a request for 12 categories of documents related to the Dallas Police Department's S.A.F.E. Team. You state that you will release most of the requested information. You claim, however, that the S.A.F.E. Team's standard operating procedures and portions of the employee personnel information is excepted from required public disclosure by sections 552.101, 552.102, 552.108, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 under section 552.102 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. You claim that the highlighted information in one officer's application is excepted under common-law privacy. We agree. You may withhold the highlighted information under section 552.101.

You also argue that other requested information must not be disclosed because it is confidential by law. Section 552.101 also encompasses information protected by other

statutes. First, Texas law prohibits the public disclosure of the results of polygraph examinations. V.T.C.S. art. 4413(29cc). Thus, you must withhold the responsive polygraph results. Second, you claim that one document must be withheld as a medical record. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The documents submitted to this office include a medical record access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical record at issue may only be released as provided by the MPA.

Lastly, you assert that section 552.101 excepts from disclosure criminal history report information ("CHRI"). 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). Therefore, if you have CHRI concerning your employees in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor.

You next contend that the S.A.F.E. Team's standard operating procedures are excepted from disclosure under section 552.108. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). After reviewing the documents and your arguments against disclosure, we conclude that section 552.108 of the Government Code excepts the standard operating procedures from disclosure, although you may choose to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007. Because we are able to make a determination under 552.108, we need not consider your argument under section 552.111.

Finally, you assert that some of the information must be withheld under section 552.117. Section 552.117 requires you to withhold the home telephone number or social security number of a current or former employee or official who requested that this

information be kept confidential under section 552.024 of the Government Code. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

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# 106666

Enclosures: Submitted documents

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