



May 20, 1999

Mr. John L. Schomburger
Assistant District Attorney
Collin County Courthouse
210 S McDonald, Ste. 324
McKinney, Texas 75069

OR99-1401

Dear Mr. Schomburger:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124677.

The Collin County District Attorney's Office (the "district attorney") received a request for information pertaining to specified individuals. You have released some of the information to the requestor. You contend that the remaining requested information submitted to this office is excepted from disclosure pursuant to a common-law right of privacy under sections 552.101 and 552.102 of the Government Code. Additionally, you claim that some of the documents are excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the documents submitted for our review.

Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The district attorney received the written request for information on February 23, 1999. This office did not receive your request for a decision until March 12, 1999, more than ten business days after the requestor's written request. Therefore, we conclude that the district attorney failed to meet his ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a

compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). In this instance, you have not presented this office with a compelling demonstration as to why the requested information should be withheld pursuant to sections 552.108 and 552.111. We therefore deem your claimed exceptions to required public disclosure under sections 552.108 and 552.111 as being waived.

Because you contend that the information concerns the privacy interests of third parties, we will consider your privacy arguments under sections 552.101 and 552.102. 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 Government Code.¹ *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* 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 at 1 (1992).

This office has found that an individual's personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). We agree that the personal credit card numbers must be withheld under sections 552.101 and 552.102 as private information. The remainder of the submitted information may not be withheld as private information. This office has found that the following types of information are not excepted from required public disclosure under common-law privacy: age, salary, title, and date of employment, Open Records Decision Nos. 455 (1987), 373 (1983); licenses, certificates, and professional awards, Open Records Decision Nos. 444 (1986), 342 (1982); educational background and training, Open Records Decision Nos. 455 (1987), 444 (1986); past work history, Open Records Decision No. 455 (1987), 444 (1986); names, addresses, and telephone numbers of job references, Open Records Decision No. 455 (1987); performance evaluations, Open Records Decision Nos. 470 (1987), 400 (1983); and reasons for a public employee's demotion, dismissal, or resignation, Open Records Decision Nos. 444 (1986), 329 (1982), 278 (1981).

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

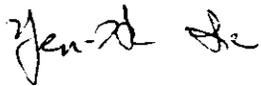
We note, however, that the requested information includes the home address, phone number, social security number and family information of a current or former employee. It is possible that this information may be confidential under section 552.117 of the Government Code, and therefore, this specific information, depending on the specific circumstances, may not be released. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *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 at 5 (1989). Therefore, if the employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code, we believe that the district attorney must withhold this information from required public disclosure pursuant to section 552.117. We have marked the information that must be withheld if the employee made the election not to allow public access to the information.

You must also withhold driver's license numbers under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver's license issued by an agency of this state.

Lastly, we have marked information that you must withhold under section 411.083 of the Government Code. Section 552.101 encompasses information protected by other statutes. Federal regulations prohibit the release of criminal history record information ("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). Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed. Therefore, assuming that you have CHRI about the individuals at issue in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 124677

Encl.: Marked documents

cc: Mr. Mark Gilliam
P. O. Box 774
Glendale, Arizona 85311
(w/o enclosures)