



November 26, 2001

Ms. Doreen L. Wheeler
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR2001-5441

Dear Ms. Wheeler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155233.

The Office of Consumer Credit Commissioner (the "commissioner") received a request for information relating to specific pawnshops and licensing information for two named pawnshop employees. You indicate that you will release some of the responsive information to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. A note following section 51.251 of the Occupations Code provides that

[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

¹We 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.

You inform this office that the submitted documents contain the social security numbers of two individuals who “were applicants for a license issued by [the commissioner],” and that “both individuals either hold or once held a pawnshop employee license issued by [the commissioner].” Based on your representations, we agree that the social security numbers contained in the submitted documents are confidential under section 51.251 of the Occupations Code. Therefore, the commissioner must withhold these social security numbers under section 552.101 of the Government Code.

The Seventy-seventh Legislature recently added sections 559.001, 559.002, and 559.003 to the Government Code, effective September 1, 2001.² These new statutes provide as follows:

Sec. 559.001. DEFINITIONS. In this chapter:

- (1) “Biometric identifier” means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.
- (2) “Governmental body” has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 559.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

- (1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:
 - (A) the individual consents to the disclosure;
 - (B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or
 - (C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and
- (2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

²See Act of May 24, 2001, 77th Leg., R.S., ch. 634, § 2 (to be codified as Gov’t Code §§ 559.001, .002, and .003), 2001 Tex. Gen. Laws 1124, 1125.

Sec. 559.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

The submitted documents include fingerprint information that is governed by these statutes. It does not appear to this office that section 559.002 permits the disclosure of this information to the requestor. Therefore, the commissioner must withhold the fingerprint information that we have marked under section 559.003 of the Government Code.

You argue that an applicant's criminal history background information is confidential. Section 14.154 of the Finance Code provides, in relevant part:

(a) Criminal history record information received by the [commissioner] is confidential and is for the exclusive use of the [commissioner].

(b) Except on court order or as provided by Section 14.155(a), the information may not be released or otherwise disclosed to another person.

Fin. Code § 14.154(a), (b). You indicate that a portion of the submitted information is criminal history record information that was received by the commissioner. Based on your comments and our review of the submitted information, we conclude that any criminal history record information that the commissioner has received is confidential under section 14.154 of the Finance Code and must be withheld under section 552.101 of the Government Code.³

You state that the probation records contained in the submitted documents pertain to an individual probationer and his compliance status. This office has concluded that a community supervision and corrections department holds probationers' records on behalf of the judiciary as an agent of the judiciary. Open Records Decision Nos. 646 at 5 (1996), 236 (1980) (records of an adult probation office, indicating whether probationers are complying with terms of probation, are records of the judiciary and not subject to the Act). However, you state that the probationer and a federal court provided the information at issue, and that it is held by the commissioner. You do not inform us that the probation records here at issue are maintained at the direction of the criminal courts as part of the courts' judicial functions. See Gov't Code § 76.002 (requiring district judges trying criminal cases to establish community supervision and correction departments, enforce the conditions of community supervision, and participate in the management of the department). Therefore, we conclude that the documents at issue are not records of the judiciary, and are thus subject to the Act. You do not argue that, nor are we aware of, any other law that would make these records confidential. Therefore, the information contained in Attachments C, D, E, and F must be released to the requestor.

³We note that it does not appear that any of the exceptions to confidentiality listed in section 14.155(a) apply.

The submitted information contains Texas driver's license numbers. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state

The commissioner must withhold Texas driver's license numbers under section 552.130.

In summary, the commissioner must withhold the fingerprint information that we have marked under section 559.003 of the Government Code. Any criminal history record information about the applicants must be withheld under section 14.154 of the Finance Code in conjunction with section 552.101. Social security numbers in the submitted documents are confidential under section 552.101 in conjunction with section 51.251 of the Occupations Code. The commissioner must withhold Texas driver's license numbers under section 552.130.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/sdk

Ref: ID# 155233

Enc: Submitted documents

c: Ms. Annette S. Muecke
P.O. Box 90991
San Antonio, Texas 78209
(w/o enclosures)