



June 11, 2002

Ms. Laura Garza Jimenez
County Attorney
County of Nueces
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2002-3158

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164172.

The Nueces County Public Works (the "county") received a request for two personnel files, one of which is the requestor's. You state that you have released to the requestor his own personnel file. You claim, however, that the other personnel file is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.117, and 552.130 of the Government Code, in addition to section 6103(a) of title 26 of the United States Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that you must release the "Order Granting Occupational License," as well as the other court-filed documents we have marked, pursuant to section 552.022(a)(17) of the Government Code.² If these documents have in fact been filed with a court, they are

¹As you did not submit to this office written comments stating any reason why section 552.103 applies to the information, we find that you have waived this exception. *See* Gov't Code §§ 552.301, .302.

²Section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(17) information that is also contained in a public court record.

Gov't Code § 552.022(a)(17). *See also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

subject to section 552.022(a)(17) and must therefore be released to the requestor. We note, however, that one of the court-filed document we have marked contains information that must be withheld from disclosure under section 552.130 of the Government Code. Section 552.130 constitutes "other law" for purposes of section 552.022, and excepts from public disclosure information relating to a driver's license issued by an agency of this state. Therefore, the county must withhold the driver's license numbers we have marked under section 552.130.

We now consider your arguments under sections 552.101 and 552.102. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as the protection provided by the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989) (credit reports, financial statements, and other personal financial information), 373 (1983) (assets and income source information). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Thus, information about the essential features of an employee's participation in a group insurance program funded in part by the state involves him in a transaction with the state and, therefore, is not excepted from disclosure by a right of privacy. On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the city. Open Records Decision No. 600 (1992). We believe that some of the submitted information constitutes highly intimate or embarrassing financial information. Further, we believe there is no legitimate public interest in this information. Accordingly, you must withhold the information we have marked according to section 552.101 in conjunction with common-law privacy.

We note that included in the submitted documents is an "Employee Prelist" form, which contains information that may be private. You indicate on that form that the county pays the premium on the employee's life insurance. Thus, the information about the life insurance is public information. However, we are unable to determine the meaning of the abbreviated descriptions of some of the deductions and do not know whether the deduction involves a transaction with a governmental body. To the extent that this form contains information about a private financial decision that does not involve a financial transaction with a governmental body, it must be withheld from disclosure under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision No. 600 (1992).

This office has concluded that common-law privacy also protects 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), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked the medical information that must be withheld under section 552.101.

The submitted information also appears to contain criminal history record information ("CHRI") 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 at 10-12 (1990). Federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). 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, 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. *See* Open Records Decision No. 565 (1990). We have marked the criminal history information that the county must withhold under section 552.101 as information made confidential by law.

You next contend that portions of the submitted documents consist of confidential medical information that must be withheld under section 552.101 of the Government Code in conjunction with the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. The MPA provides in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c).

The information we have marked appears to have been created or maintained by a physician. Accordingly, we find that this information is subject to the MPA, and may only be released in accordance with that statute.

You also assert that some of the submitted information consists of W-4 forms. Section 6103(a) of title 26 of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp 748 (M.D.N.C. 1989). Our office has specifically held that W-4 Forms must be withheld in their entirety. Open Records Decision No. 600 at 9 (1992). Therefore, the county must withhold the W-4 Forms we have marked.

You next argue that some of the submitted information is excepted under 552.024 and 552.117. Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the county may only withhold information under section 552.117 on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the present request for this information was received.

You state, and the election form you have provided indicates, that the employee whose information is at issue had elected to deny public access to his home address and home telephone number at the time the county received the request. The county must therefore

withhold this employee's home telephone number and home address. The employee's election form only concerns the employee's home address and telephone number and does not cover the employee's social security number or family information. Thus, the county may not withhold from disclosure the employee's social security number and family information based on section 552.117(1). We have marked the information that must be withheld under section 552.117(1).

We note, however, that social security numbers in the submitted information may be private under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the university pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that some of the submitted information consists of credit card, debit card, charge card, or access device numbers made confidential under section 552.136. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value;
or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code §552.136. We have marked the information that the county must withhold under section 552.136.

In summary, you must release the documents we have marked under section 552.022(a)(17), but you must redact in those documents information subject to section 552.130, which we have marked. You must withhold the personal financial and medical information, which we have marked, under section 552.101 in conjunction with common-law privacy. You must withhold the information we have marked in accordance with the MPA. The submitted W-4 forms, which we have marked, must also be withheld. You must withhold the information we have marked in connection with section 552.117. We have marked motor vehicle information that must be withheld under section 552.130. Finally, we have marked credit card, debit card, charge card, or access device numbers that must be withheld under section 552.136. The remaining information must be released to the requestor.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 164172

Enc: Submitted documents

c: Mr. David DeLeon
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(w/o enclosures)