



August 5, 2002

Mr. Russell W. Malm
County Attorney
Midland County
200 West Wall Street, Suite 104
Midland, Texas 79701

OR2002-4272

Dear Mr. Malm:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166679.

The Midland County Sheriff and the Midland County Judge (the “county”), which you represent, received written requests for all records pertaining to a former county employee. You state that some responsive information has been released to the requestor. You contend, however, that some of the remaining information coming within the scope of the request is excepted from required public disclosure pursuant to sections 552.101 and 552.102 of the Government Code.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. In this regard, we first note that section 845.115(a) of the Government Code provides as follows:

(a) Information contained in records that are in the custody of the [Texas County and District Retirement System] concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 552.101, and may not be disclosed in a form identifiable with specific individual unless:

(1) the information is disclosed to:

- (A) the individual or the individual's attorney, guardian, executor, administrator, conservator or other person who the director determines is acting in the interest of the individual or the individual's estate;
 - (B) a spouse or former spouse of the individual and the director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;
 - (C) a governmental official or employee if the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or
 - (D) a person authorized by the individual in writing to receive the information; or
- (2) the information is disclosed pursuant to a subpoena and the director determines that the individual will have a reasonable opportunity to contest the subpoena.

Some of the information you submitted to us for review falls within the confidentiality provision set forth in section 845.115 of Government Code. Unless you determine that one of the stated exceptions applies, we conclude that the county must withhold all records submitted to or received from the Texas County and District Retirement System.

Also among the records at issue are the employee's W-4 forms. These forms constitute confidential "tax return information" and as such must be withheld in their entirety pursuant to federal law. *See* 26 U.S.C. § 6103. However, the information you submitted pertaining to a tax levy does not constitute "tax return information" and therefore must be released to the requestor.

You next contend that some of the submitted information is excepted from public disclosure pursuant to section 552.102(a) of the Government Code. Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must

be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

You contend that certain "medical" information about the employee is protected from public disclosure under section 552.102. In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/ seizures, or emotional/mental distress. Open Records Decision No. 343 (1982). The medical information contained in the records at issue is not the type of information that implicates the employee's privacy interests and thus may not be withheld pursuant to section 552.102.

We note, however, that information revealing a public employee's decision whether to participate in an insurance plan that his or her employer offers (but does not fund), as well as other personal financial decisions, is considered intimate and of no legitimate public interest. *See* Open Records Decision No. 600 (1992). We have marked the personal financial information that the county must withhold on privacy grounds.

Finally, we note that you have informed us that the former employee was a licensed peace officer when he was employed by the county, and it is your belief that he continues to be a licensed peace officer. Section 552.117(2) of the Government Code requires the county to withhold all information that relates to the home address, home telephone number, social security number, and family information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). After reviewing the submitted records, we conclude that the county must withhold these categories of information pertaining to the former employee pursuant to section 552.117(2).

In summary, the county must withhold pursuant to section 845.115 of Government Code all of the submitted records that the county submitted to or received from the Texas County and District Retirement System unless you determine that one of the exceptions to confidentiality applies in this instance. The employee's W-4 forms must be withheld as confidential "tax return information." The county must also withhold pursuant to section 552.102(a) the personal financial information we have marked. Finally, the county must withhold pursuant

to section 552.117 the employee's home address, home telephone number, social security number, and family information, some of which we have also marked. The remaining submitted 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).

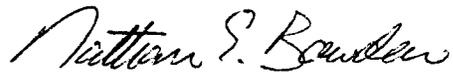
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/RWP/sdk

Ref: ID# 166679

Enc: Submitted documents

c: Ms. Charlotte Bingham
Crenshaw, Dupree & Milam
P.O. Box 1499
Lubbock, Texas 79408-1499
(w/o enclosures)