



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 12, 2002

Mr. Christopher Gregg
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Houston, Texas 77062

OR2002-7091

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173515.

The City of Shoreacres Police Department (the "department"), which you represent, received a request for eleven categories of information regarding Officer Edward Summer. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.1175 and 552.130 of the Government Code and under section 143.089 of the Local Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note initially that the requestor specifically states in his request that he is not "interested in receiving *Officer Edward Summer's* [sic] personal information such as his social security number, personal bank account information, date of birth, or home address and phone number, etc." As submitted information falling into these categories is therefore non-responsive to the instant request for information, you need not release these categories of information to the requestor. Accordingly, we will not address your arguments under sections 552.117 and 552.1175.

We also note that in one of the submitted copies of the requested information you have redacted badge numbers, phone numbers and addresses of previous employers, and phone numbers of references. You have not provided, nor are we aware of, any exceptions to required disclosure under the Public Information Act that apply to this information. Accordingly, we find that you must release the badge numbers, phone numbers and addresses of previous employers, and phone numbers of references that you have redacted. See Gov't Code §§ 552.006,.301(a),.302.

We further note that you assert that section 143.089 of the Local Government Code will except "certain information" in an officer's personnel file from public disclosure.

Chapter 143 of the Local Government Code authorizes a municipality with a population of 10,000 or more, and a salaried fire and police department, to hold an election to adopt a "fire fighters' and police officers' civil service law." Loc. Gov't Code §§ 143.002, .004. According to the 2000 Texas State Directory, however, the population of the City of Shoreacres is 1,714.¹ Furthermore, you do not inform us that the city is a civil service city, nor have you labeled the specific information which you seek to withhold from disclosure under section 143.089. See Gov't Code §552.301(e)(2) (governmental body must label the submitted information to indicate which exceptions apply to which parts of the information). We therefore conclude that the confidentiality provisions of section 143.089 are not applicable to the records at issue.

We also note that the submitted information contains a document filed with a court that is subject to section 552.022(a)(17). Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Thus, you must release the submitted court document, which we have marked, under section 552.022(a)(17).

We next address your assertion that the documents you have marked are records subject to the Medical Practice Act (the "MPA"). Some of the records you have marked are medical records, access to which is governed by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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, other than a person listed in Section 159.004 who is acting on the patient's behalf, 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 medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the documents which are medical records subject to the MPA.

¹*Texas State Directory*, 43rd ed. (Austin: Texas State Directory, Inc., 2000), 537.

We note that some of the documents you have marked as medical records are confidential under section 552.101 in conjunction with section 1701.306 of the Occupations Code.² Section 1701.306 of the Occupations Code provides, in relevant part, as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Occ. Code § 1701.306 (emphasis added). The submitted information contains a “Declaration of Psychological and Emotional Health” that is confidential pursuant to section 1701.306 of the Occupations Code. We have marked the document that must be withheld under section 552.101 of the Government Code in conjunction with section 1701.306.

We now consider your assertion that some of the submitted information relating to financial information is excepted from release under section 552.101 of the Government Code in conjunction with common-law privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when it is (1) highly intimate or embarrassing, such that release of the information would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

You argue that the submitted information contains personal financial information that is excepted from release under common-law privacy. This office has held that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from release under common-law privacy. *See Open Records*

²Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

Decision Nos. 600 (1992), 545 (1990). We have marked the personal financial information that you must withhold under section 552.101. Furthermore, we find that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Accordingly, you must release Officer Summer's salary information. We further note that a public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common-law right of privacy. *See* Open Records Decision Nos. 600 at 9-10 (1992) (information about public employee's participation in group insurance program funded in part by the state is not protected under common-law privacy, while information concerning employee's election to enroll in additional coverage paid solely by the employee is private), 545 (1990) (information about decision to allocate salary to voluntary investment program is protected under common-law privacy). Some of the information on Officer Summer's payroll summary appears to relate to voluntary investment programs. You must withhold the submitted payroll information under section 552.101 to the extent it represents coverage funded solely by a public employee.

You also argue that criminal history background checks are excepted from release pursuant to section 552.101 and common-law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). However, none of the submitted information consists of criminal history compilations. Accordingly, you may not withhold any of the submitted information pursuant to section 552.101 in conjunction with common-law privacy and *Reporters Committee*.

We now address your assertion that some of the submitted information is excepted from release under section 552.101 in conjunction with title 26 section 6103(a) of the United States Code. Title 26 section 6103(a) 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). This office has also addressed the types of information made confidential under section 6103(a). *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Upon review, we find that none of the submitted information constitutes tax return information for purposes of section 6103(a). Accordingly, you may not withhold any of the submitted information pursuant to section 552.101 in conjunction with title 26 section 6103(a) of the United States Code.

We now address your assertions that Officer Summer's driver's license number is excepted from release under section 552.130 of the Government Code.³ 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; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the department must withhold all Texas driver's license information, Texas license plate number information, and the vehicle identification number contained in the submitted documents, which we have marked, under section 552.130. It is not clear that one of the license plate numbers that we have marked is a Texas license plate number. As section 552.130 only applies to Texas motor vehicle records, the department may only withhold the indicated license plate number if it is a Texas license plate number.

We note that the submitted information also contains a mental health record subject to section 611.002 of the Health and Safety Code. Section 611.002 applies to "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the document that is a mental health record made confidential under section 552.101 in conjunction with section 611.002 that may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

Finally, we note that the submitted information contains social security numbers.⁴ Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure 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

³We note that the department did not raise section 552.130 as to the additional motor vehicle information contained in the submitted information. However, the Office of the Attorney General will raise mandatory exceptions including section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴As noted above, Officer Summer's social security number is not responsive to the immediate request.

(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 file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information 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 department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the department may only release the marked medical records as provided under the MPA. The department must withhold the marked "Declaration of Psychological and Emotional Health" under section 552.101 in conjunction with section 1701.306 of the Occupations Code. The department must withhold the marked personal financial information under section 552.101 in conjunction with common-law privacy, in addition to the submitted payroll information under section 552.101 to the extent it represents investments or insurance coverage funded solely by a public employee. The department must withhold the marked Texas driver's license information, Texas license plate numbers, and the vehicle identification number included with the submitted information pursuant to section 552.130. You must withhold the mental health record made confidential under section 552.101 in conjunction with section 611.002 of the Health and Safety Code. Finally, the department may need to withhold some of the included social security numbers under section 552.101 in conjunction with the federal Social Security Act. The department must release the remainder of the responsive information.

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,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 173515

Enc: Submitted documents

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(w/o enclosures)