



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2004

Sergeant Theresa Lock
Support Services
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2004-6545

Dear Sergeant Lock:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 206205.

The Williamson County Sheriff's Office (the "sheriff") received two requests for personnel or disciplinary information related to employees of the sheriff's office who were promoted during a specified time period. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

First, we address the sheriff's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that the office received the first request for information on May 11, 2004. You did not request a decision from this office until May 28, 2004. Consequently, you failed to request a decision within the ten-business-day period mandated by section 552.301(b) of the Government Code. Furthermore, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not submit general written comments stating the reasons why the stated exceptions apply that would allow the information responsive to the May 11th request to be withheld. Thus, we find that the sheriff failed to comply with the procedural requirements of section 552.301 in requesting a decision from us in regard to the information that is responsive to the May 11th request.

Under section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption that the information is public and must be released. In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). The applicability of sections 552.101, 552.117, and 552.1175 can provide compelling reasons to withhold information from disclosure. Accordingly, we will address your claims under these sections with regard to both requests and all of the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice

agency for a criminal justice purpose. *Id.* § 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. *See* Open Records Decision No. 565 (1990). Furthermore, 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. *Cf.* Gov't Code § 411.082(2) (definition of criminal history record information does not include driving record information).

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating 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. *Id.* at 683.

In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). After careful review of the submitted documents, we have marked the information that is confidential under common law privacy and must be withheld pursuant to section 552.101.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cell phone numbers, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175.¹ Section 552.117(a)(2) adopts the definition

¹We note that section 552.117 is applicable only to a personal pager or cell phone number paid for by the peace officer. *See* Open Records Decision No. 670 at 6(2001) (statutory predecessor to section 552.117(a)(2) encompassed personal cellular phone numbers and personal pager numbers of peace officers who purchased cellular or pager service with their personal funds). A pager or cell phone number provided to a peace officer at public expense may not be withheld under section 552.117. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use).

of peace officer found at article 2.12 of the Code of Criminal Procedure. To the extent that the information we have marked under section 552.117 relates to a peace officer employed by the sheriff, the information must be withheld under section 552.117(a)(2).²

To the extent that the information that we have marked under section 552.117 does not relate to a peace officer employed the sheriff, the information may be excepted from disclosure under section 552.117(a)(1). Section 552.117(a)(1) excepts the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be made at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the sheriff may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the sheriff's receipt of the request for the information. The sheriff may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election for confidentiality under section 552.024. Therefore, the section 552.117 information of any current or former employee who timely elected confidentiality for the information under section 552.024 must be withheld under section 552.117(a)(1).

Section 552.1175 also may be applicable to some of the submitted information. This section 552.1175 provides in part:

(a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department; and
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code.

²We note that a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)-(b). To the extent that the information that we have marked under section 552.1175 relates to a county jailer under section 1701.001 of the Occupations Code, a current or former employee of the Texas Department of Criminal Justice or a division of the department, or a peace officer of another governmental entity, the sheriff must withhold the information under section 552.1175 if the individual to whom it pertains has elected to restrict access to the information in accordance with section 552.1175(b).

We also note that a social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act if a governmental body obtained or maintains the social security number under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the sheriff to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that the Act imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the sheriff should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

Some of the information must also be withheld under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

- (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, you must also withhold the information that we have marked under section 552.130.

We note that the submitted information contains an insurance policy number that is subject to section 552.136 of the Government Code, which provides in relevant part:

(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. The marked insurance policy number is excepted from disclosure pursuant to section 552.136 of the Government Code.

Also, section 552.137 of the Government Code provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

....

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does

not apply to a government employee's work e-mail address or a business's general e-mail address or web address. We have marked e-mail addresses that are excepted from disclosure under section 552.137(a). Accordingly, we conclude that, unless consent to release has been granted, the sheriff must withhold these e-mail addresses pursuant to section 552.137(a) of the Government Code.

We further note that the submitted information includes forms governed by section 552.140 of the Government Code, which provides that a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. Gov't Code § 552.140(a), (b). You have not indicated the date on which these forms first came into the possession of the sheriff. If this date was on or after September 1, 2003, the sheriff must withhold the forms under section 552.140. If this date was before September 1, 2003, the sheriff may not withhold the forms on this basis.

Finally, we note that a portion of the information at issue appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, we conclude that the sheriff must withhold the following information under section 552.101 of the Government Code: 1) any criminal history record information, and 2) the information we have marked under common-law privacy. To the extent that the information we have marked under section 552.117 relates to a peace officer employed by the sheriff, the information must be withheld under section 552.117(a)(2). The section 552.117 information of any current or former employee who timely elected confidentiality for the information under section 552.024 must be withheld under section 552.117(a)(1). To the extent that the information that we have marked under section 552.1175 relates to a county jailer under section 1701.001 of the Occupations Code, a current or former employee of the Texas Department of Criminal Justice or a division of the department, or a peace officer of another governmental entity, the sheriff must withhold the information under section 552.1175 if the individual to whom it pertains has elected to restrict access to the information in accordance with section 552.1175(b). Social security numbers may be confidential under federal law. The sheriff must withhold the information that we have marked under sections 552.130, 552.136, and 552.137. The submitted DD-214 forms must be withheld pursuant to section 552.140 of the Government Code if the forms first came into the possession of the sheriff on or after September 1, 2003. The remaining

information must be released to the requestor, in compliance with copyright law for any information protected by copyright.³

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 Dep't of Pub. 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.

³As our ruling is dispositive, we do not address your other claim regarding this information. *See* Open Records Decision No. 681 (2004) (Health Insurance Portability and Accountability Act ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8, does not make information confidential for purpose of section 552.101 of the Government Code).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 206205

Enc. Submitted documents

c: Ms. Sarah Coppola
Austin American-Statesman
203 E. Main Street, Suite 102
Round Rock, Texas 78664
(w/o enclosures)

Mr. Marcial Guajardo
Round Rock Leader
P. O. Box 459
Round Rock, Texas 78680-0459
(w/o enclosures)