



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2004

Dr. D.C. Jim Dozier
Executive Director
Texas Commission on Law Enforcement
6330 U.S. Highway 290 East, Suite 200
Austin, Texas 78723

OR2004-9026

Dear Dr. Dozier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211996.

The Texas Commission on Law Enforcement (the "commission") received a request for certain information related to a named individual. The commission has released a portion of the requested information to the requestor. However, you claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 1701.306 of the Occupations Code, which makes declarations of medical condition and of psychological and emotional health confidential, provides in part:

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

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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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(a), (b) (emphasis added). Therefore, the commission must withhold the submitted declarations pursuant to section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.²

In regard to the remaining submitted information, we note the documents contain information relating to a peace officer who is not employed by the commission. This information may be subject to section 552.1175 of the Government Code, which provides in part:

(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(b). If this individual is still a peace officer and elects to restrict access to his personal information in accordance with section 552.1175, the commission must withhold this information. *See, e.g.,* Open Records Decision No. 678 (2003). Otherwise, this information may not be withheld on this basis.

²As our ruling on this issue is dispositive, we need not address your remaining arguments regarding this information.

If section 552.1175 is inapplicable, the social security number must 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 the submitted social security number is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act ("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 commission pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state or a personal identification document issued by an agency of this state or authorized local agency. *See* Gov't Code § 552.130. Accordingly, the commission must withhold the Texas driver's license information under section 552.130 of the Government Code.

Finally, section 552.137 provides in part:

(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.

Gov't Code § 552.137(a), (b). 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. To the extent that the submitted e-mail addresses are not government employees' work e-mail addresses, we conclude that, unless consent to release has been granted, the commission must withhold these e-mail addresses pursuant to section 552.137(a) of the Government Code. Otherwise, the e-mail addresses must be released.

In summary, we conclude that: 1) the commission must withhold the submitted declarations pursuant to section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; 2) if the individual in question is still a peace officer and elects to restrict access to his personal information in accordance with section 552.1175, the commission must withhold this information; 3) the social security number may be confidential under federal law; 4) the commission must withhold the Texas driver's license information under section 552.130 of the Government Code; and 5) to the extent that the submitted e-mail addresses are not government employees' work e-mail addresses and consent to release has not been granted, the commission must withhold these e-mail addresses pursuant to section 552.137(a) of the Government Code. All remaining responsive information must be released.

You also ask this office to issue a previous determination authorizing the commission to withhold all declarations of medical condition and of psychological and emotional health under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) that the commission must withhold all declarations of medical condition and of psychological and emotional health under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the commission need not ask for a decision from this office again with respect to this type of information requested of the commission under Chapter 552 of the Government Code. *Id.*

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

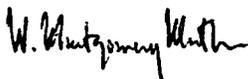
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The 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.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 211996

Enc: Submitted documents

c: Mr. Darwin Bible
17422 Northern Star Drive
Houston, Texas 77084
(w/o enclosures)