



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2005

Ms. Bertha Ontiveros  
Assistant County Attorney  
El Paso County  
County Courthouse  
500 E. San Antonio, Rm 503  
El Paso, Texas 79901

OR2005-06728

Dear Ms. Ontiveros:

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# 228963.

The El Paso County Sheriff's Office (the "sheriff") received a request for several categories of information regarding a former employee. You state that you will release most of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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. 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. After reviewing the submitted information, we agree that some of the submitted information, which we have marked, is excepted from required public disclosure by section 552.101 of the Government Code. We note, however, that DPS has the authority to release an individual's own CHRI to that individual. Gov't Code § 411.083(b)(3).

You also claim that the submitted information consists of social security numbers of current or former licensed peace officers. Section 552.117(a)(2) excepts from public disclosure a peace officer's current or former home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.<sup>1</sup> After reviewing the submitted information, we agree that the social security numbers of current or former peace officers employed by the sheriff, which we have marked, must be withheld under section 552.117(a)(2) of the Government Code.

We note that the remaining social security numbers are excepted from disclosure under section 552.147 of the Government Code.<sup>2</sup> Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>3</sup> Therefore, the sheriff must withhold the social security numbers we have marked under section 552.147.<sup>4</sup>

Finally, you claim that the submitted fingerprints are governed by sections 560.001, 560.002, and 560.003 of the Government Code, which are also encompassed by section 552.101 of the Government Code. These provisions provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter

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<sup>1</sup>Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

<sup>2</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

<sup>4</sup>Because we are able to make a determination under section 552.147, we do not address your claim under section 552.1175 with respect to this information.

(1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Gov't Code §§ 560.001-.003. These sections protect the privacy of a living individual to whom a fingerprint or other biometric identifier pertains. *See id.* § 560.002(1)(a). Therefore, the requestor has a right of access to her own fingerprint information under section 560.002, and that information may not be withheld from her under section 552.101 of the Government Code.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The sheriff must withhold the social security numbers we have marked under section 552.117(a)(2) of the Government Code. The sheriff must withhold the remaining

social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released.<sup>5</sup>

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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

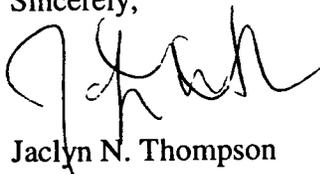
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<sup>5</sup>We note, however, that the submitted documents contain information that is confidential with respect to the general public. See Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the sheriff receives another request for this information from someone other than this requestor or her representative, the sheriff should again seek a decision from this office.

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,



Jaelyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 228963

Enc. Submitted documents

c: Catalina Cervera  
12098 Autumn Gate  
El Paso, Texas 79936  
(w/o enclosures)