



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2005

Mr. Christopher Gregg
Gregg & Gregg
16055 Space Center Boulevard, Suite 150
Houston, Texas 77062

OR2005-09890

Dear Mr. Gregg:

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# 235300.

The City of Webster (the "city"), which you represent, received a request for information regarding a named former fire chief. You indicate that you have released some of the requested information, but you claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.1175, and 552.130 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. The submitted information includes medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part:

(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.

Occ. Code § 159.002(b), (c). 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, 159.005. 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 medical records that may only be released in accordance with the MPA. Open Records Decision No. 598 (1991).

We note that the submitted information includes an I-9 form (Employment Eligibility Verification) and its attachments. Title 8, section 1324a of the United States Code, which is also encompassed by section 552.101 of the Government Code, provides that an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the I-9 form and its attachments are confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The submitted information includes W-2 and W-4 forms. Section 552.101 of the Government Code encompasses section 6103(a) of Title 26 of the United States Code, which provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the city must withhold the submitted W-2 and W-4 forms pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Next, we address the city's privacy arguments for the remaining information. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. Accordingly, we will consider your privacy claims under sections 552.101 and 552.102 together.

For information to be protected from public disclosure by the common law right of privacy under section 552.101 of the Government Code, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. 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. Prior decisions of this office have determined that some kinds of medical information and personal financial information not related to a transaction between an individual and a governmental body are protected by common law privacy. *See* Open Records Decision Nos. 600 (1992) (personal financial information not related to transaction with governmental body generally not subject to legitimate public interest), 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, procedures, and physical disabilities protected by privacy). However, this office has also determined that the essential facts about a financial transaction between an individual and a governmental body generally are subject to a legitimate public interest. *See* Open Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common law privacy), 523 (1989).

Based on our review of the remaining information at issue, we find that the information we have marked is confidential under common law privacy and must be withheld under sections 552.101 and 552.102 on that basis. We find, however, that no portion of the remaining information is confidential under common law privacy, and therefore none of it may be withheld under either section 552.101 or 552.102 on that basis. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).

Portions of the remaining information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Section 552.117(a)(2) excepts from disclosure this same information regarding a peace officer regardless of whether the officer elected under section 552.024 or

552.1175 of the Government Code to keep such information confidential.¹ If the former employee at issue was a licensed peace officer at the time of the city's receipt of the request, the city must withhold the present and former home addresses and telephone numbers, social security number, and family member information of this former employee pursuant to section 552.117(a)(2).² Pursuant to section 552.117(a)(1), the city must withhold the same information for this former employee if he was not a licensed peace officer at the time of the city's receipt of the request, but elected, prior to the city's receipt of the request, to keep such information confidential. We have marked the information that must be withheld if section 552.117 is applicable.

Even if the former employee's social security number is not protected under section 552.117(a)(1), his social security number, in addition to the other social security numbers contained in the submitted information, must be withheld under section 552.147 of the Government Code,³ which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold the submitted social security numbers under section 552.147.⁴

The remaining documents include Texas motor vehicle record information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). Accordingly, the city must withhold the Texas motor vehicle information we have marked under section 552.130.

We note that the remaining documents include credit card and checking account numbers. Section 552.136 of the Government Code provides that "[n]otwithstanding 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."⁵ Gov't Code § 552.136. Accordingly, the city must withhold the credit card and checking account numbers we have marked pursuant to section 552.136.

¹The term peace officer is defined in article 2.12 of the Texas Code of Criminal Procedure.

²As we are able to make this determination, we need not address your section 552.1175 claim against disclosure.

³Added 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).

⁴We 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.

⁵This office will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We further note that the remaining documents include an e-mail address excepted from disclosure under section 552.137 of the Government Code. This section excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the relevant member of the public has affirmatively consented to the release of the e-mail address at issue. Therefore, the city must withhold the e-mail address we have marked under section 552.137.

In summary, the marked medical records may only be released in accordance with the MPA. The I-9 form and its attachments and the W-2 and W-4 forms must be withheld pursuant to section 552.101 of the Government Code in conjunction with federal law. The marked information must be withheld under sections 552.101 and 552.102 of the Government Code in conjunction with common law privacy. The information we have marked must be withheld under section 552.117(a)(2) of the Gov't Code if the former employee was a licensed peace officer at the time of the city's receipt of the request. If the former employee was not a licensed peace officer at the time of the city's receipt of the request, the information we have marked must be withheld under section 552.117(a)(1) of the Gov't Code if the former employee made a timely election to withhold such information. The submitted social security numbers must be withheld under section 552.147 of the Government Code. The Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code. The credit card and checking account numbers we have marked must be withheld under section 552.136 of the Government Code. The e-mail address we have marked must be withheld under section 552.137 of the Government Code. 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, 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); *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 Office of the Attorney General 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. 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 235300

Enc. Submitted documents

c: Ms. Adrienne Nettles
Fort Worth Star-Telegram
3201 Airport Freeway, Suite 108
Bedford, Texas 76021
(w/o enclosures)