



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2005

Ms. M. Ann Montgomery  
Assistant Ellis County & District Attorney  
Ellis County and District Attorney  
Temporary Administrative Building  
1201 North Highway 77, Suite 104  
Waxahachie, Texas 75165-7832

OR2005-11552

Dear Ms. Montgomery:

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# 238773.

The Ellis County Sheriff's Office (the "sheriff") received a request for all employment history records and any documentation, certifications, or other records concerning education, certification, training or discipline pertaining to a named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge that some of the submitted information pertains to sheriff's office employees other than the individual at issue. As this information falls outside of the scope of the request it is, therefore, nonresponsive to the instant request. *See Econ. Opportunities*

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<sup>1</sup>Although you raise section 552.024 of the Government Code, we note that this section is not an exception to disclosure under the Act. Rather, this section permits an employee of a governmental body to choose whether to allow public access to certain information relating to the employee that is held by the employing governmental body. *See Gov't Code* § 552.024. Section 552.117 of the Government Code is the proper exception to raise in this instance. Accordingly, we address your section 552.024 claim under section 552.117.

*Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Thus, we do not address your arguments for this information, which we have marked, and this information need not be released in response to the current request.

The submitted information contains copies of a form F-5 (Report of Separation of License Holder), which is made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides in relevant part:

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454. Therefore, the sheriff must withhold the F-5 form pursuant to section 552.101 in conjunction with section 1701.454 of the Occupations Code.

We note that a portion of the submitted information constitutes medical record information, access to which is governed by the Medical Practice Act (“MPA”), chapter 159 of the Occupations Code. Section 159.002 provides in pertinent 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). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991).

Medical records must be released upon the governmental body’s receipt of 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. *See* 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. *See* Open Records Decision No. 565 at 7

(1990). We have marked the medical record information that is subject to the MPA. Absent the applicability of an MPA access provision, the sheriff must withhold this information pursuant to the MPA.

Next, we note that the submitted documents contain fingerprint information. Sections 560.001, 560.002, and 560.003 of the Government Code, which are also encompassed by section 552.101, provide as follows:

Sec. 560.001. DEFINITIONS. In this chapter:

- (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. Upon review, we find that section 560.002 does not permit the disclosure of the submitted fingerprint information in this instance. Therefore, the sheriff must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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. 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. We have marked the CHRI in the submitted documents that must be withheld. We note that no portion of the remaining submitted information constitutes criminal history record information for the purposes of chapter 411.

We next address your claim that the submitted information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102 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 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. We will therefore address common-law privacy under section 552.101 together with your claim regarding section 552.102.

The doctrine of common-law privacy protects information if it: (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person; and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d 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.* In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (*citing U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); 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). We have reviewed the submitted records and marked the information that must be withheld pursuant to section 552.101 in conjunction with common-law privacy.

Next, section 552.117(a)(2) of the Government Code excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175.<sup>2</sup> *See* Gov't Code § 552.117(a)(2). We have marked the information that the department must withhold pursuant to section 552.117(a)(2).

Next, we note that the remaining submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the Texas motor vehicle record information we have marked is excepted from disclosure pursuant to section 552.130.

The remaining submitted information also contains a military discharge record. Section 552.140 of the Government Code provides in relevant part:

(a) This section applies only to 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.

Gov't Code § 552.140(a). Section 552.140 provides that a military veteran's DD-214 form 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

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<sup>2</sup>The term peace officer is defined in article 2.12 of the Texas Code of Criminal Procedure.

period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. See Gov't Code § 552.140(a), (b). You do not indicate when the sheriff first came into possession of the submitted military discharge record. Therefore, if this record, which we have marked, first came into the possession of the sheriff on or after September 1, 2003, we conclude that the sheriff must withhold this information under section 552.140. Otherwise, the record must be released, subject to the markings we have made under section 552.117(a)(2).

In summary, the sheriff is not required to release the nonresponsive information. Pursuant to section 552.101 of the Government Code the sheriff must withhold (1) the F-5 forms in conjunction with section 1701.454 of the Occupations Code; (2) the marked medical records in conjunction with the MPA; (3) the marked fingerprint information under section 560.003 of the Occupations Code, and (5) the CHRI we have marked in conjunction with chapter 411. We have marked private information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked pursuant to 552.117(a)(2) of the Government Code. The Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code. If it was obtained on or after September 1, 2003, the sheriff must withhold the submitted military discharge record pursuant to section 552.140 of the Government Code. The remaining information must be released.

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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 238773

Enc. Submitted documents

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(w/o enclosures)