



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

February 23, 2006

Mr. David M. Swope  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2006-01803

Dear Mr. Swope:

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# 242846.

The Harris County Civil Service Commission (the "commission") received a request for "any and all appeals before the commission regarding [a named Harris County deputy]." You state that you have released a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes recordings of meetings of the commission. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the "minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." Gov't Code § 551.022. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure under chapter 552 of the

---

<sup>1</sup>Although you also initially asserted section 552.102 of the Government Code as an exception to disclosure, in subsequent correspondence you failed to provide arguments in support of this claim. See Gov't Code §§ 552.301, .302. Therefore, we assume you no longer assert this exception.

Government Code. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the commission must release the submitted recordings in accordance with section 551.022.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information that another statute makes confidential. Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 611.002 of the Health and Safety Code. You contend that a portion of the submitted information is confidential under section 611.002 of the Health and Safety Code. This section applies to “[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional.” Health & Safety Code § 611.002; *see also* Health & Safety Code § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the information that constitutes mental health records for the purposes of chapter 611. This information is confidential under section 611.002 and must therefore be withheld from disclosure under section 552.101. We find, however, that the commission has failed to demonstrate how any portion of the remaining submitted information is subject to chapter 611 of the Health and Safety Code. Therefore, no portion of the remaining information may be withheld on this basis.

Section 552.101 also encompasses section 1701.306 of the Occupations Code. The submitted information contains L-3 Declarations of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education (the “TCLEOSE”). These declaration forms are confidential pursuant to section 1701.306 of the Occupations Code, which provides in relevant part:

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

(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

...

(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 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. Therefore, the commission must withhold the L-3 declaration forms we have marked under section 552.101 in conjunction with section 1701.306 of the Government Code. Although the commission has also marked additional information which references the declarations, we note that section 1701.306 applies only to the declaration form itself. Accordingly, none of the remaining information at issue may be withheld under section 1701.306.

Next, we address your argument under section 552.101 of the Government Code in connection with section 58.007 of the Family Code. Section 58.007(c) of the Family Code provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 51.02(2)(A) defines "child" as a person who is ten years of age or older and under seventeen years of age. Although you raise section 58.007 of the Family Code for Exhibits E and F, you have not explained, and information does not reflect, how any portion of either Exhibit E or F constitute a law enforcement record or file concerning a juvenile suspect or offender. Therefore, the commission cannot withhold any portion of Exhibit E or F under section 552.101 on the basis of section 58.007.

Section 552.101 also encompasses common-law privacy which 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. *Indus. 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. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: 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), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked information that must be withheld under section 552.101 in conjunction with common-law privacy.

We next address your claim that some of the submitted information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's 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. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, we have marked information that the commission must withhold under section 552.117(a)(2) of the Government Code.

Finally, you claim that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a)(1)-(3). We have marked that Texas motor vehicle record information that must be withheld pursuant to section 552.130.

In summary, the recordings of the commission meetings must be released pursuant to the Open Meetings Act, chapter 551 of the Government Code. The L-3 forms in the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. Further, the mental health records we have marked must be withheld under section 552.101 in conjunction with section 611.002 of the Health and Safety Code. The commission must also withhold the information we have marked in the submitted documents under section 552.101 and common-law privacy. The

commission must withhold the home address and telephone number, social security number, and family member information we have marked pursuant to section 552.117 of the Government Code. Finally, the commission must withhold the Texas motor vehicle record information that we have marked pursuant to section 552.130 of the Government Code. The commission must release the remaining submitted information.

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,



Matthew T. McLain  
Assistant Attorney General  
Open Records Division

MM/jh

Ref: ID# 242846

Enc. Submitted documents

c: Ms. Rosanna Ruiz  
801 Texas Avenue  
Houston, Texas 77210  
(w/o enclosures)