



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2006

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

OR2006-05795

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# 251307.

The Harris County Constable Precinct 8 (the "constable") received a request for the personnel records of a named former deputy constable. You state that the constable will release some of the requested information to the requestor, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.1175, 552.130, and 552.147 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 contains a W-4 form. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The W-4 form constitutes tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

The submitted information also contains an I-9 form (Employment Eligibility Verification), which is governed by section 1324a of Title 8 of the United States Code. This section 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 the form in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that the submitted I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You claim that the submitted information contains fingerprint information that is 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. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You indicate that section 560.002 does not permit the release of the fingerprint information in this instance. Accordingly, the constable must withhold the information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

You claim that the submitted information contains criminal history record information (“CHRI”), which is also encompassed by section 552.101 of the Government Code. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center 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 id.* § 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. However, we note that the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See id.* § 411.082(2)(B). After reviewing the submitted information, we have marked the CHRI which must be withheld under section 552.101 of the Government Code.

The submitted information also includes an L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education. Section 1701.306 of the Occupations Code provides as follows:

(a) The commission 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

(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. Therefore, the constable must withhold the submitted L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

We next address your claim under common law privacy. Section 552.101 encompasses the doctrine of common law privacy. Section 552.102 of the Government Code excepts from public 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). Section 552.102 is applicable to information that relates to public officials and employees. *See Open Records Decision No. 327 at 2 (1982)* (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). We will therefore consider the applicability of common law privacy under section 552.101 together with your claim regarding section 552.102.

In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), the Texas Supreme Court held that information is protected by common law privacy 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 a legitimate concern to the public. *See Indus. Found.*, 540 S.W.2d at 685. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by common law privacy. *See Open Records Decision Nos. 470 (1987)* (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Furthermore, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common law privacy. *Open Records Decision Nos. 600 (1992)* (personal financial choices concerning insurance are generally confidential), 545 (1990) (common law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common law privacy protects assets and income source information).

We have reviewed the submitted records and marked the private information that must be withheld pursuant to sections 552.101 and 552.102 on the basis of common law privacy. However, we find that none of the remaining information is protected under common law privacy. *See Open Records Decision Nos. 470 (1987)* (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (concluding that public has obvious interest in having access to information concerning performances of governmental employees, particularly employees who hold positions as sensitive as those held by members of law enforcement), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2-3 (1983) (public has interest in workplace conduct of public employee), 342 (1982). Thus, none of the remaining submitted information may be withheld on this basis.

Next, section 552.117(a)(2) of the Government Code exempts from disclosure the current and former home address, home telephone number, personal cellular telephone number, social security number, and family member information of a peace officer, regardless of whether the officer made an election under section 552.024 or 552.1175.¹ Gov't Code § 552.117(a)(2). Based on our review, we find that the constable must withhold the information we have marked pertaining to the deputy pursuant to section 552.117(a)(2).²

Section 552.130 of the Government Code exempts from disclosure 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." *Id.*

¹"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

²As we reach this conclusion, we need not address your claims under section 552.147 of the Government Code.

§ 552.130. In accordance with section 552.130 of the Government Code, the constable must withhold the Texas motor vehicle record information we have marked. *See id.*

In summary, the constable must withhold the following confidential information under section 552.101 of the Government Code: (1) the submitted W-4 form pursuant to section 6103(a) of title 26 of the United States Code, (2) the submitted I-9 form pursuant to section 1324a of title 8 of the United States Code, (3) the marked CHRI pursuant to chapter 411 of the Government Code, (4) the marked fingerprint information pursuant to section 560.003 of the Government Code, (5) the submitted L-2 and L-3 declarations pursuant to section 1701.306 of the Government Code, and (6) the information we have marked pursuant to the common law right to privacy. Pursuant to section 552.117(a)(2) of the Government Code, the constable must withhold the information we have marked. The constable must withhold the Texas-issued motor vehicle record information we marked under section 552.130 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 251307

Enc. Submitted documents

c: Mr. Mark R. Thiessen
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(w/o enclosures)