



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2006

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

OR2006-05985

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# 251165.

The Harris County Constable-Precinct 8 (the "constable") received a request for the complete civil service personnel file of a named officer. You state that the constable has released a portion of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 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 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 protected by other statutes, such as chapter 1701 of the Occupations Code. The submitted information includes an L-2 Declaration of Medical Condition and an L-3 Declaration of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education (the "commission") that are confidential pursuant to section 1701.306 of the Occupations Code. Section 1701.306 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 L-2 and L-3 declarations we have marked under section 552.101 in conjunction with section 1701.306.

We also note that the information contained in the submitted documents includes a W-4 form. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code, which is also encompassed by section 552.101 of the Government Code, renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). Therefore, the constable must withhold the W-4 forms in the submitted personnel file under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

An I-9 Form is governed by section 1324a of title 8 of the United States Code, which provides that the 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. 8 U.S.C. § 1324a(b)(5). Release of this document under the Act would be "for purposes other than for enforcement" of the referenced federal statute. Accordingly, we conclude that the submitted I-9 Form is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The submitted information also include fingerprints. 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

do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprints. Therefore, the constable must withhold this information, which it has marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses confidentiality relating to criminal history record database information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. 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. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. 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 records that must be withheld under section 552.101 in conjunction with chapter 411 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(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Bd.*, 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 of the Act. *See id.* at 683-85. Accordingly, we will consider your privacy claims under section 552.101 and section 552.102(a) together.

In order for information to be protected from public disclosure by the doctrine of common law privacy under section 552.101, 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 publication of which would be highly objectionable to a reasonable person, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685. You seek to withhold portions of the submitted information that contain the results of the officer's criminal history background check. Generally, information revealing the results of an individual's criminal history compilation is highly embarrassing information. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, the information you have marked does not pertain to a private citizen. In this instance, the information pertains to a peace officer and was used by the constable in its hiring process and, presumably, played a role in its employment decision. This office has ruled that there is a legitimate public interest in the background and qualifications of public employees, especially those who work in law enforcement. *See Open Records Decision Nos. 542 (1990), 444 at 5-6 (1986)*. Therefore, there is a legitimate public interest in this information and it may not be withheld under common law privacy; we have marked this information for release.

This office has, however, found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see Open Records Decision No. 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 ORD 600, 545 (1990)*; details of an employee's enrollment in optional health and insurance programs, employee's dependent coverages, and direct deposit authorization, *see ORD 600 at 9-12*; credit reports, financial statements, and other personal financial information, *see Open Records Decision 523 (1989)*. We agree that the information you have marked is excepted from disclosure under common law privacy. We have also marked some additional personal financial information to be withheld under common law privacy.

Next, you claim section 552.1175 of the Government Code is applicable portions of the submitted information. Section 552.1175 applies to peace officers¹ and provides in pertinent part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may

¹"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). This provision allows a peace officer who is not employed by the constable to elect to restrict access to his home address and telephone number, social security number, and family member information. However, the submitted information reflects that the officer in question is employed by the constable. Accordingly, section 552.1175 of the Government Code is inapplicable in this instance.

We note, however, that section 552.117(a)(2) of the Government Code is the applicable exception to assert in this instance. Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member 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. *See* Gov't Code § 552.117(a)(2). Thus, we generally agree that the information the constable has marked must be withheld under section 552.117(a)(2). However, some of the information you have marked does not reveal whether the officer at issue has family members. We have indicated the information that is excepted under section 552.117(a)(2) and must be withheld.

The submitted records also contain Texas motor vehicle record information. Section 552.130 of the Government Code 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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. By its terms, section 552.130 only applies to Texas-issued motor vehicle records. Accordingly, the constable may not withhold out-of-state motor vehicle record information under section 552.130. The Texas motor vehicle record information you have marked, in addition to the information we have marked, must be withheld pursuant to section 552.130.

Finally, we note that the submitted information contains the social security numbers of individuals other than the named peace officer. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the constable must also withhold the social security numbers of the individuals it has marked.²

²We 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.

In summary, the constable must withhold the following in conjunction with section 552.101 of the Government Code: 1) the L-2 and L-3 declarations pursuant to section 1701.306 of the Occupations Code; 2) the W-4 forms pursuant to section 6103 of title 26 of the United States Code; 3) the I-9 form pursuant to section 1324a of title 8 of the United States Code; 4) the fingerprint information it has marked pursuant to section 560.003 of the Government Code; 5) the CHRI we have marked pursuant to chapter 411 of the Government Code; 6) the marked information pursuant to common law privacy. The constable must also withhold the following: 1) the information we have indicated must be withheld pursuant to section 552.117(a)(2) of the Government Code; 2) the marked Texas motor vehicle record information pursuant to section 552.130 of the Government Code; and 3) the marked social security numbers pursuant to section 552.147 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 251165

Enc. Submitted documents

c: Mr. Mark R. Thiessen
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Houston, Texas 77002
(w/o enclosures)