



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2007

Ms. Myra Morris  
Royston, Rayzor, Vickery & Williams, L.L.P.  
Frost Bank Plaza  
802 North Carancahua, Suite 1300  
Corpus Christi, Texas 78470

OR2007-16248

Dear Ms. Morris:

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# 297095.

The Jim Wells County Sheriff's Office (the "sheriff"), which you represent, received a request for the personnel file of a named C/D investigator and deputy. You state that you have released some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, 522.117, 552.119, 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 encompasses information protected by other statutes. Gov't Code § 552.101. This section encompasses information protected by other statutes such as Chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center 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 the CHRI it generates. *See 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 the 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 the DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We have marked the information that constitutes CHRI, which is confidential under section 411.083 and must be withheld under section 552.101 of the Government Code.

We note that the fingerprint records of the named deputy are excepted from disclosure by section 552.101 in conjunction with chapter 560 of the Government Code. The public availability of fingerprints is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 defines “biometric identifier,” for the purposes of these sections, as meaning “a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.” *Gov’t Code* § 560.001(1). Section 560.002 provides that 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 [the Act]; 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.

*Id.* § 560.002. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. As there is no indication that the requestor has a right of access under section 560.002 to the fingerprints, the fingerprint records that we have marked are confidential under section 560.003 and must be withheld from disclosure under section 552.101 of the Government Code.

We note that the submitted information contains L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms that are excepted from disclosure pursuant to section 552.101 in conjunction with section 1701.306 of the Occupations Code. Section 1701.306 provides as follows:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] 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(a), (b). We have marked the declarations that are confidential under section 1701.306 of the Occupations Code, and must be withheld under section 552.101 of the Government Code.

We next note that the submitted information contains an F-5 form (Report of Separation of License Holder), which is made confidential by section 1701.454 of the Occupations Code. Section 552.101 also encompasses section 1701.454. Section 1701.454 provides in relevant part that “[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.” *Id.* § 1701.454(a). The sheriff must withhold the F-5 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses the doctrine of 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Section 552.102, which you also raise, 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). Section 552.102(a) protects information that relates to public officials and employees. The privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 and *Industrial Foundation*. *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 to Gov’t Code § 552.102). Therefore, we will address your privacy claims under section 552.101.

This office has 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 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we have marked the information that is protected under common-law privacy. The sheriff must withhold this information under section 552.101 of the Government Code.

Next, we address your claim that a portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code, which provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) or section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

As a general rule, section 552.108 is not applicable to a law enforcement agency's personnel records. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App. – Austin 2002, no pet.) (Section 552.108(b)(1) not applicable to documents obtained by police department for purpose of evaluating applicant's fitness for employment), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App. – El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You have not explained how or why the release of the information at issue would interfere with a criminal investigation. Therefore, we conclude that you have not demonstrated that any of the submitted information is excepted from disclosure under section 552.108, and none of it may be withheld on that basis. *See Gov't Code* § 552.108(a)(1), (b)(1); *see also Open Records Decision Nos.* 562 at 10 (1990) (predecessor to section 552.108(b) not applicable to employment information in police officer's file), 361 at 2-3 (1983) (statutory predecessor to section 552.108(b) not applicable to background information collected on unsuccessful applicant for employment with sheriff's department).

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>1</sup> Gov't Code § 552.117(a)(2). The sheriff must withhold the information of the named deputy constable that we have marked under section 552.117(a)(2).

The submitted documents also contain information subject to section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

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<sup>1</sup>Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.12.

- (2) a motor vehicle title or registration issued by an agency of this state[.]

*Id.* § 552.130. Accordingly, you must withhold the Texas driver's license and motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>2</sup>

Finally, we note that the submitted information contains an insurance policy number.<sup>3</sup> Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

*Id.* § 552.136. We have marked the insurance policy number in the submitted information that must be withheld under section 552.136 of the Government Code.

In summary, you must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The fingerprint record information must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code. The L-2 and L-3 forms, and the F-5 form we have marked must be withheld under section 552.101 in conjunction with sections 1701.306 and 1701.454 of the Occupations Code, respectively. You must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy. You must withhold the home address, home telephone number, social security number, and family information we have marked under section 552.117(a)(2). The Texas driver's license number and motor

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<sup>2</sup>As our ruling is dispositive, we need not address your argument under section 552.119 of the Government Code.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

vehicle record information we have marked must be withheld under section 552.130 of the Government Code. Finally, you must withhold the insurance policy number we have marked pursuant to section 552.136 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in cursive script that reads "Jordan Johnson".

Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 297095

Enc. Submitted documents

c: Mr. Mauricio Julian Cuellar, Jr.  
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