



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2008

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

OR2008-07955

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# 313419.

The Harris County Constable (the "constable") received a request for any and all reports, employment records, and disciplinary records concerning a former employee. You state that you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 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 exception encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In addition, prior decisions of this office have found that personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983)*. For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is excepted from disclosure under

the common-law right of privacy. *See* ORD 545. Likewise, an employee's designation of a retirement beneficiary is excepted from disclosure under the common-law right to privacy. *See* ORD 600. However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See id.* at 10. The constable must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes. The submitted information contains fingerprints, the public availability of which is governed by chapter 560 of the Government Code. *See* Gov't Code §§ 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), 560.003 (biometric identifier in possession of governmental body is exempt from disclosure under Act). Section 560.002 provides that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Therefore, the constable must withhold the fingerprint information you have marked under section 552.101 of the Government Code in conjunction with section 560.002 of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which deems confidential criminal history information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). 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. 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). You indicate that the submitted material contains criminal history information that is confidential under chapter 411. Upon review, we find that portions of the submitted information constitutes CHRI for the purposes of chapter 411. Therefore, the constable may withhold the information we have marked on that basis under section 552.101 of the Government Code.

We also note that the submitted information contains W-4 forms. Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code which makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. § 6103(b)(2). Upon review, we have determined that the constable must withhold the information we have

marked under section 552.101 of the Government Code in conjunction with section 6103 of the United States Code.

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 I-9 form, which we have marked, is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.117 of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). We note that section 552.117 also encompasses a personal cellular telephone number, provided that the cellular phone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). You state that the individual at issue timely requested that this information be kept confidential. Therefore, the constable must withhold the information you have marked and the additional information we have marked pursuant to section 552.117.

Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130(a)(1)-(2). Therefore, the Texas motor vehicle information that we have marked must be withheld under section 552.130 of the Government Code.

You also assert that a portion of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136 states that "[n]otwithstanding 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. Accordingly, the constable must withhold the account numbers you have marked and the routing numbers we have marked pursuant to section 552.136.

Under section 552.147 of the Government Code, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). You also inform us that the employee identification numbers you have marked

are the same as the individual's social security number. Therefore, the constable may withhold the social security numbers and employee identification numbers that you have marked under section 552.147.¹

In summary: (1) the constable must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the constable must withhold the fingerprint information you have marked under section 552.101 of the Government Code in conjunction with section 560.002; (3) the constable must withhold the information we have marked under section 552.101 of the Government Code on the basis of section 411.083; (4) the constable must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103 of the United States Code; (5) the constable must withhold the I-9 form that we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (6) the constable must withhold the information you have marked and the additional information we have marked pursuant to section 552.117 of the Government Code; (7) the constable must withhold the Texas motor vehicle information that we have marked under section 552.130 of the Government Code; (7) the constable must withhold the account numbers you have marked and the routing numbers we have marked pursuant to section 552.136 of the Government Code; and (8) the constable may withhold the social security numbers and employee identification numbers that you have marked under section 552.147 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).

¹We 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.

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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 313419

Enc. Submitted documents

c: Mr. Joseph M. Whiteley
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(w/o enclosures)