



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2008

Mr. John C. West  
General Counsel  
Office of the Inspector General  
Texas Department of Criminal Justice  
4616 Howard Lane, Suite 250  
Austin, Texas 78728

OR2008-12778

Dear Mr. West:

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# 321897.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to two specified job postings.<sup>1</sup> You state you will release some of the requested information. You also state you have redacted social security numbers pursuant to section 552.147.<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

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<sup>1</sup>The department sought and received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

<sup>2</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public releases without the necessity of requesting a decision from this office under the Act.

Initially, you seek to withhold the submitted transcripts under the provisions of the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(a). FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds. These provisions only apply to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. 34 C.F.R. § 99.33(a)(2). In this instance, the department maintains the transcripts at issue. The department is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth is not an “educational agency” within FERPA). You do not assert, nor does it appear from our review, that the department received the transcripts directly from the educational institutions at issue. Therefore, FERPA does not apply to the submitted transcripts.

Next, you state you are redacting certain addresses, telephone numbers, social security numbers, and personal family information pursuant to the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005). In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the personal information of a current or former employee of the department under section 552.117(a)(3) of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov’t Code § 552.301(a)). We note section 552.117(a)(3) does not apply to an individual’s work telephone number. We also note a post office box number is not a “home address” for purposes of section 552.117. *See* Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 552.117 is to protect public employees from being harassed at *home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added). Further, section 552.117(a)(3) deems information confidential only in order to protect an individual’s privacy. Therefore, the requestor has a special right of access pursuant to section 552.023 to his own information that would otherwise be excepted from disclosure to the public under section 552.117(a)(3). *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the department must release the requestor’s personal information to him. We note the remaining information pertains to applicants. Thus, to the extent the applicants are current or former employees of the department, the department must withhold their personal information, which we have marked, under section 552.117(a)(3). If the applicants are not current or former employees of the department, the department may not withhold the personal information we have marked under section 552.117(a)(3).

It appears some of the applicants are peace officers. Accordingly, if the applicants are not current or former employees of the department, then their personal information may be excepted from disclosure under section 552.1175 of the Government Code. Section 552.1175 of the Government Code provides in part as follows:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may 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). Thus, to the extent the personal information we have marked relates to currently licensed peace officers who are not current or former employees of the department and who elect to restrict access to their information in accordance with section 552.1175(b), this information must be withheld from disclosure under section 552.1175.

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. Section 552.101 encompasses 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 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 in conjunction with chapter 411, subchapter F of the Government Code. You state the submitted information contains CHRI. Upon review, we find the information we have marked constitutes CHRI and is confidential under section 411.083. Therefore, the information we have marked must be withheld under section 552.101 of the Government Code. Because the department has not demonstrated how any portion of the remaining

information constitutes CHRI for purposes of section 411.083, it may not be withheld on that basis.

You state portions of the remaining information are subject to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note, however, section 552.130 does not apply to out-of-state motor vehicle record information. We have marked the Texas motor vehicle record information the department must withhold under section 552.130 of the Government Code.

The remaining information contains e-mail addresses that may be subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses in the remaining information are not specifically excluded by section 552.137(c). Therefore, unless the department receives consent for their release, the e-mail addresses we have marked must be withheld under section 552.137. *See id.* § 552.137(b).

Finally, we note a portion of the submitted information is subject to section 552.140 of the Government Code.<sup>3</sup> Section 552.140 provides in relevant part:

- (a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

*Id.* § 552.140(a). Section 552.140 provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a), (b). The submitted information indicates the department first came into possession of the submitted DD-214 form after September 1, 2003. Thus, we conclude the department must withhold the submitted DD-214 form, which we have marked, under section 552.140.

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<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).

In summary, to the extent the applicants are current or former employees of the department, the department must withhold their personal information, which we have marked, under section 552.117(a)(3) and Open Records Letter No. 2005-01067. If the applicants are not former or current employees of the department and they are licensed peace officers, then the department must withhold the personal information we have marked under section 552.1175, if the applicants elect to restrict access to their information. The department must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The department must withhold the Texas motor vehicle record information we have marked under section 552.130. Unless the department receives consent for their release, the e-mail addresses we have marked must be withheld under section 552.137. The department must withhold the DD-214 form we have marked under section 552.140. 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). If the governmental body does not file suit over 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).

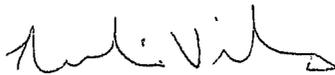
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 321897

Enc. Submitted documents

c: Mr. Erik Tolpo  
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(w/o enclosures)