



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 6, 2008

Ms. Laura Garza Jimenez  
Nueces County Attorney  
Nueces County Courthouse  
901 Leopard Room 207  
Corpus Christi, Texas 78401-3680

OR2008-15281

Dear Ms. Jimenez:

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# 327394.

The Nueces County Constable, Precinct 4 (the "constable") received a request for a named employee's personnel file. You state that some of the requested information will be released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 6103 of title 26 of the United States Code makes federal tax return information confidential. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(2) ("Return information" includes "the nature, source, or amount of income" of a taxpayer). We agree that the constable must withhold the submitted W-4 forms in their entirety under section 6103.

Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "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). In this instance, the release of the submitted Form I-9's would be "for purposes other than for enforcement" of the applicable federal law. A Form I-9 may only be released for purposes of compliance with the federal laws and regulations governing the employment verification system. We therefore agree that the constable must withhold the submitted Form I-9's under section 1324a of title 8 of the United States Code.

Section 1701.454 of the Occupations Code is applicable to certain information relating to the Texas Commission on Law Enforcement Officer Standards and Education. As amended by the 79<sup>th</sup> Legislature, section 1701.454 provides as follows:

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. You seek to withhold a TCLEOSE Form L-1 (Application for License/Employment Report) and a TCLEOSE Form F-6 (Report of Training) under section 1701.454. We note, however, that this statute is applicable only to a report or statement submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. *See* Occ. Code § 1701.454(a). The only report or statement found in subchapter J is a Form F-5 (“Report of Separation of Licensee”). *See id.* § 1701.452. We therefore conclude that the constable may not withhold the submitted Form L-1 and Form F-6 under section 1701.454 of the Occupations Code.<sup>1</sup> *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the

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<sup>1</sup>We note that the prior version of section 1701.454, which was continued in effect to govern a report of a resignation or termination that occurred before the effective date of the amendment of the statute, also is applicable only to a report or statement submitted to the commission under subchapter J of chapter 1701. *See* Act of May 25, 2005, 79<sup>th</sup> Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4094, 4096.

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). You contend that two submitted documents relating to a drug test are confidential under the MPA. You have not demonstrated, however, that the documents in question constitute a communication between a physician and a patient or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. *See id.* § 159.002(a)-(b). We therefore conclude that those documents are not confidential under the MPA and may not be withheld from the requestor on that basis.

Section 611.002 of the Health and Safety Code is applicable to mental health records and provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). You also contend that the documents relating to the drug test are confidential under section 611.002. You have not demonstrated, however, that the information in question constitutes a communication between a patient and a professional or records of the identity, diagnosis, evaluation, or treatment of a patient that were created or are maintained by a professional. *See id.* § 611.002(a). We therefore conclude that those documents are not confidential under section 611.002 of the Health and Safety Code and may not be withheld on that basis.

Section 552.101 of the Government Code also 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). Common-law privacy protects the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). You have highlighted information relating to the named employee’s personal dentist that the constable seeks to withhold on this basis. We agree that the constable must withhold that information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You have highlighted the information that the constable seeks to withhold under section 552.117(a)(2). You state that the information in question is related to a licensed peace officer who is currently employed by the constable. We agree that the constable must withhold the highlighted information under section 552.117(a)(2). We have marked additional information that must also be withheld under this exception.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See id.* § 552.130(a)(1). The constable must withhold the Texas driver's license information that we have marked under section 552.130.

In summary: (1) the constable must withhold the W-4 forms under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code; (2) the Form I-9's must be withheld under section 552.101 in conjunction with section 1324a of title 8 of the United States Code; (3) the information relating to the employee's dentist must be withheld under section 552.101 in conjunction with common-law privacy; (4) the information that you have highlighted under section 552.117(a)(2) of the Government Code must be withheld, along with the additional information that we have marked under that exception; and (5) the Texas driver's license information that we have marked must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.<sup>2</sup>

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).

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<sup>2</sup>As we are able to make these determinations, we need not address your other arguments against disclosure.

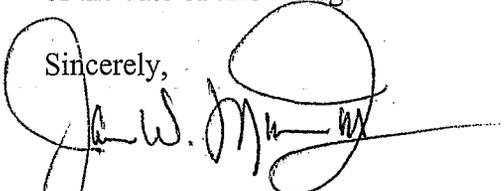
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/jh

Ref: ID# 327394

Enc: Submitted documents

c: Mr. Robert Bujanos, Jr.  
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(w/o enclosures)