



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2008

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

OR2008-15753

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# 327951.

The Nueces County Constable, Precinct 4 (the "constable") received a request for the personnel file of a named deputy. You state you are releasing some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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 information made confidential by statute. Section 552.101 encompasses section 1324a of title 8 of the United States Code, which 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). Release of the submitted I-9 form under the Act would be "for purposes

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<sup>1</sup>Although you also assert section 552.1175 of the Government Code, we do not address this exception because the proper exception to raise in this case is section 552.117. Section 552.117 is applicable because the constable holds the information at issue in its capacity as the employer of the named deputy.

other than for enforcement” of the referenced federal statutes. Accordingly, we find that the I-9 form you have marked is confidential under 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.<sup>2</sup>

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code. The submitted information includes a W-4 form. Prior decisions of this office have held that section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as

a taxpayer’s identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . , or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted W-4 form, which you have marked, constitutes tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.<sup>3</sup>

Next, you contend the submitted F-5 form (Report of Separation of License Holder) and L-1 form (Report of Appointment/License Application) are confidential pursuant to section 1701.454 of the Occupations Code. Section 552.101 also encompasses section 1701.454, which provides in relevant part that “[a] report or statement submitted to the [Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”)] 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.” Occ. Code § 1701.454(a). In this instance, it does not appear that the officer whose information is at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the constable must withhold the F-5 form you have marked pursuant to section 552.101 of the Government Code

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<sup>2</sup>As our ruling is dispositive for the submitted I-9 form, we need not address your remaining arguments against disclosure of portions of this information.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of the submitted W-4 form.

in conjunction with section 1701.454 of the Occupations Code.<sup>4</sup> However, the submitted L-1 form is not a report required to be filed with TCLEOSE under subchapter J of chapter 1701. Thus, the submitted L-1 form is not confidential under section 1701.454, and the constable may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the Occupations Code provides in pertinent part:

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

*Id.* § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 at 7 (1990). We have marked the medical records that may only be released in accordance with the MPA.<sup>5</sup>

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of portions of the submitted F-5 form.

<sup>5</sup>As our ruling is dispositive for this information, we need not address your arguments against the disclosure of the submitted medical records.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). We have marked the information that is both intimate and embarrassing and of no legitimate public interest. This information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>6</sup>

Next, we address your argument that a portion of the remaining information is excepted under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>7</sup> Gov't Code § 552.117(a)(2). You inform us that the individual whose information is at issue is a licensed peace officer who is currently employed with the constable as a deputy. Thus, you must withhold the information you have marked in the remaining information, as well as the additional information we have marked, under section 552.117(a)(2).<sup>8</sup>

Next, we address your contention that a portion of the remaining information is excepted under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to:

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

*Id.* § 552.130(a). Accordingly, the constable must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130.

You contend the e-mail address you have marked in the remaining information is subject to section 552.137 of the Government Code. Section 552.137 states that "an e-mail address of

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<sup>6</sup>As our ruling for this information is dispositive, we need not address your arguments under sections 552.117 and 552.136 of the Government Code for this information.

<sup>7</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

<sup>8</sup>As our ruling on this information is dispositive, we need not address your argument under section 552.147 of the Government Code for the named deputy's social security number.

a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). You state that the e-mail address at issue is the personal e-mail address of the named deputy. You also state that the deputy has not consented to the release of his e-mail address. Accordingly, we agree that the constable must withhold the marked e-mail address under section 552.137 of the Government Code.

In summary, the constable must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and section 6103(a) of title 26 of the United States Code. The constable must withhold the F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The medical records we have marked may only be released in accordance with the MPA. The constable must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable must withhold the information you have marked, as well as the additional information we have marked, under sections 552.117(a)(2) and 552.130 of the Government Code. Finally, the constable must withhold the marked e-mail address under section 552.137 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). 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 327951

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)