



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2008

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2008-16037

Dear Ms. Lytle:

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# 328512.

El Paso County (the "county") received a request for nine categories of information concerning the county's Office of the Medical Examiner and Forensic Laboratory. You state that most of the requested information will be made available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

¹We note that although you raise section 552.024 of the Government Code, this section is not an exception to disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. Further, although you raise section 552.102 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information.

²We note you have redacted social security numbers from the submitted information. 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. Gov't Code § 552.147(b).

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. This exception encompasses information that other statutes make confidential. 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 and its attachment 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. Therefore, the county must withhold the Form I-9 and its attachment, which we have marked, in Attachment D under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. We note section 552.117 also encompasses a personal cellular telephone number, unless the service is paid for by a governmental body. *See* Open Records Decision Nos. 670 at 6 (2001), 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cell phone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The county may only withhold information under section 552.117(a)(1) on behalf of former or current employees who have made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. You state that the county employees whose information you have marked elected to keep their personal information confidential before the county received the instant request for information. Accordingly, the county must withhold the personal information that you have marked under section 552.117 of the Government Code. If the additional employee whose personal information we have marked timely elected to withhold her personal information under section 552.024, this marked information must also be withheld under section 552.117(a)(1). If that employee did not timely elect confidentiality, the marked information may not be withheld under section 552.117(a)(1).

Section 552.130 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

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

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Upon review, we determine that the remaining records contain Texas motor vehicle record information subject to section 552.130. Therefore, the county must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.³

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 at issue are not a type specifically excluded by section 552.137 (c). Accordingly, the county must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their disclosure.

We note the submitted information includes a DD-214 form. Section 552.140 of the Government Code 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.⁴ *See id.* § 552.140(a), (b). Although you do not inform us when the county came into possession of the submitted DD-214 form, based on our review, the form came into the possession of the county after September 1, 2003. Thus, the county must withhold this form, which we have marked, in its entirety under section 552.140 of the Government Code.

In summary, the county must withhold the Form I-9 and the attachment in Attachment D under section 552.101 in conjunction with section 1324a of title 8 of the United States Code. The county must withhold the personal information you have marked pursuant to section 552.117(a)(1) of the Government Code. To the extent that the additional employee

³As our ruling is dispositive, we need not address your remaining argument for the motor vehicle information.

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

at issue made a timely election under section 552.024, the county must also withhold the information we have marked pertaining to that employee under section 552.117(a)(1). The county must withhold the motor vehicle information you have marked, and the additional information we have marked, under section 552.130 of the Government Code, and the e-mail addresses you have marked under section 552.137 of the Government Code unless the owners consent to their release. The county must withhold the DD-214 form we have marked under section 552.140 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,

A handwritten signature in cursive script that reads "Jonathan Miles".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 328512

Enc. Submitted documents

c: Requestor
(w/o enclosures)