



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2009

Mr. David M. Swope
Assistant County Attorney
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2009-07811

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# 345350.

The Harris County Constable's Office, Precinct 5, (the "constable") received a request for a named officer's personnel file. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.137, and 552.147 of the Government Code. 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. This section encompasses information made confidential by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 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[.]" See 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). The constable must withhold the W-4 form we have marked under section 552.101 in conjunction with federal law.¹

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release the biometric identifiers of an individual except in certain limited circumstances. *See Gov't Code* §§ 560.001 (defining "biometric identifier"), .002 (prescribing the manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). Upon review, however, we find that the submitted information does not contain any biometric identifiers. Therefore, the constable may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses section 411.192 of the Government Code. Section 411.192 governs the release of all information maintained by the Department of Public Safety (the "DPS") concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

...

(d) This section does not prohibit the department from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by the department.

Id. § 411.192(a), (b), (d). It appears that the constable received the information we marked under section 411.192 from DPS. In this instance, the requestor is not a criminal justice

¹ As our ruling is dispositive, we need not address your remaining argument against disclosure of portions of this information.

agency, nor is the requestor a license holder whose information is at issue. Further, we note that section 411.193 is not applicable in this instance. *See* Gov't Code § 411.193 (making a statistical report including the number of licenses issued, denied, revoked, or suspended by DPS during the preceding month available to the public). Therefore, the constable must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.²

Section 552.101 encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies 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 DPS maintains, except that 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.* §§ 411.090-411.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Therefore, the constable must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.³ However, we determine that no portion of the remaining information constitutes CHRI generated by either the TCIC or NCIC databases. Therefore, no portion of the remaining information is confidential under chapter 411 and none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 1701.454 of the Occupations Code. Section 1701.454 governs the public availability of an F-5 form ("Report of Separation of Licensee") submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) A report or statement submitted to [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

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of portions of this information..

³ As our ruling is dispositive, we need not address your remaining argument against disclosure of portions of this information..

incidents of excessive force or violations of the law other than traffic offenses.

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

Occ. Code § 1701.454. In this instance, it does not appear that the named officer resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We, therefore, conclude that the constable must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.⁴

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306(a) provides that “[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]” Occ. Code § 1703.306(a). It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, we conclude the constable must withhold the information acquired from a polygraph examination, which we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy and excepts from public disclosure private information about an individual if the information (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find that a portion of the information you have marked is highly intimate or embarrassing and of no legitimate interest to the public. However, the remaining information you have marked, which we have marked for release, is not highly intimate or embarrassing

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of portions of this information..

and of no legitimate concern to the public, and may not be withheld under common-law privacy. Accordingly, with the exception of the information we have marked for release, the constable must withhold the financial information you have marked, as well as the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. We note section 552.117(a)(2) encompasses a peace officer's personal cellular telephone and pager numbers if the officer personally pays for the cellular or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1998) (Gov't Code § 552.117 not applicable to cellular mobile telephone numbers paid for by governmental body and intended for official use). You have marked several addresses you claim are protected under section 552.117(a)(2). It appears, however, that some of the information you have marked does not pertain to the named deputy. The constable may only withhold the portions of the marked information that pertain to a peace officer's current and former home addresses and telephone numbers, social security number, and family member information under section 552.117(a)(2). To the extent any of the marked information does not pertain to a peace officer, that information may not be withheld under section 552.117(a)(2). As you have claimed no other exceptions to disclosure for that information, it must be released.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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(a)(1), (b). You have marked information concerning peace officers who are not employed by the constable. The constable must withhold the information you have marked under section 552.1175 to the extent the marked information relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b).

You assert that some of the remaining information is excepted under 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. *Id.* § 552.130(a)(1), (2). We note that some of the information you have marked does not consist of Texas motor vehicle record information; we have marked this information for release. Thus, except for the information marked for release, the constable must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130.

You have also marked an e-mail address under 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 address in the remaining information is not specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

You claim that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. The constable may withhold the social security numbers you have marked under section 552.147.⁵

In summary, the constable must withhold the W-4 form we have marked under section 552.101 in conjunction with federal law. The constable must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code. The constable must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The constable must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The constable must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. With the exception of the information we have marked for release, the constable must withhold the financial information you have marked, as well as the additional

⁵ We 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. Gov't Code § 552.147(b).

information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold only the marked information pertaining to a peace officer under section 552.117(a)(2) of the Government Code. The constable must withhold the information you have marked under section 552.1175 of the Government Code to the extent the marked information relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b). Except for the information marked for release, the constable must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The constable must withhold the e-mail address you have marked, unless the owner of the address has affirmatively consented to its release under section 552.137 of the Government Code. The constable may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.

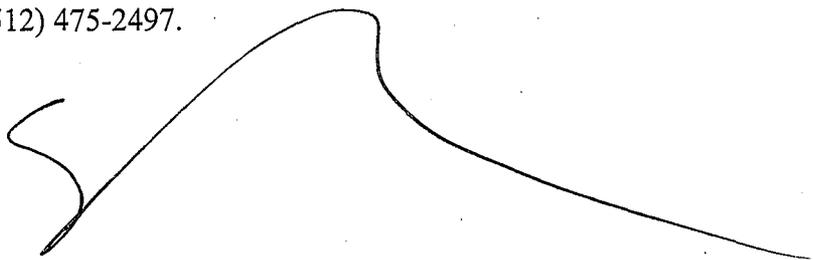
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division



CS/cc

Ref: ID# 345350

Enc. Submitted documents

cc: Requestor
(w/o enclosures)