



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2009

Mr. Daniel Ray
Scott, Money & Ray
P.O. Box 1353
Greenville, Texas 75403-1353

OR2009-09925

Dear Mr. Ray:

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# 350525.

The Hunt County Sheriff's Office (the "sheriff"), which you represent, received a request for all information related to a named individual's applications for employment with the sheriff. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception 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 the common-law right of 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information including disabilities or

¹While you raise section 552.102 of the Government Code, we note that section 552.102 only applies to the personnel files of employees of a governmental body. Because the individual at issue is not an employee of the sheriff, section 552.101 of the Government Code is the proper exception to raise in this instance.

specific illnesses to be excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find some of the submitted information, which we have marked, is highly intimate or embarrassing and of no legitimate public interest. Therefore, the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy. However, the remaining information is of legitimate public interest because it pertains to the qualifications of a potential employee. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 encompasses information protected by other statutes, including chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center (the "TCIC"). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See id.* § 411.083. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* 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. Furthermore, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. A portion of the remaining information constitutes CHRI generated by the TCIC and the NCIC. We have marked the information the sheriff must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

552.101 also encompasses section 1701.454 of the Occupations Code, which makes confidential F-5 forms (Report of Separation of License Holder). Section 1701.454 provides in relevant part that "[a] report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code." Occ. Code § 1701.454(a). Therefore, the sheriff must withhold the F-5

forms and the attachments to one of the F-5 forms that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

We note some of the remaining information may be subject to sections 552.1175, 552.130, 552.136, and 552.137 of the Government Code.² Section 552.1175 provides in part:

(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). If the named individual is still a peace officer and elects to restrict access to his personal information in accordance with section 552.1175, then the sheriff must withhold the information we have marked under section 552.1175. *See, e.g.*, Open Records Decision No. 678 (2003). Otherwise, this information must be released.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, the sheriff must withhold the Texas driver's license numbers and Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we determine the insurance policy number we have marked constitutes an access device number for purposes of section 552.136. Therefore, the sheriff must withhold the marked insurance policy number under section 552.136 of the Government Code.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

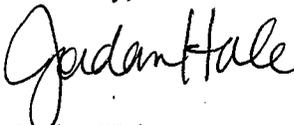
Finally, section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address we have marked in the remaining information is not of a type specifically excluded by section 552.137(c). Therefore, the sheriff must withhold the e-mail address we have marked in accordance with section 552.137, unless the sheriff receives consent for its release.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and section 1701.454 of the Occupations Code. If the named individual is still a peace officer and elects to restrict access to his personal information in accordance with section 552.1175, then the sheriff must withhold the information we have marked under section 552.1175 of the Government Code. The sheriff must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code, and the e-mail address we have marked under section 552.137 of the Government Code, unless the sheriff receives consent for its release. The remaining information must be released to the requestor.

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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/eeg

Ref: ID# 350525

Enc. Submitted documents

cc: Requestor
(w/o enclosures)