



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2009

Mr. Warren M.S. Ernst
Chief, General Counsel Division
Office of the City Attorney
City of Dallas
1500 Marilla Street, Room 7BN
Dallas, Texas 75201

OR2009-15849

Dear Mr. Ernst:

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# 359805.

The Dallas Fire-Rescue department (the "department") received a request for all personnel records pertaining to two named emergency medical technicians. You state you will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

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 protected by other statutes including section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

that this section renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). Thus, the submitted W-4 forms in Exhibit H constitute tax return information that must generally be withheld under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 also encompasses section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 and "any information contained in or appended to such form, 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 form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude the submitted I-9 forms in Exhibit G are confidential pursuant to section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses the Medical Practice Act ("MPA"). *See* Occ. Code §§151.001-165.160. Section 159.002 of the MPA 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). Upon review, we conclude that Exhibit C consists of medical records that are subject to the MPA. Thus, Exhibit C may only be released in accordance with the MPA.

Next, you assert that the personnel file contains fingerprints. Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.*

§§ 560.001 (defining "biometric identifier" to include fingerprints), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). Accordingly, we have marked the fingerprint information in Exhibit F that is generally confidential under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, the remaining information does not consist of fingerprint information for the purposes of chapter 560. Therefore, none of the remaining information is confidential under section 560.003, and the department may not withhold it under section 552.101 on that basis.

Section 552.101 also encompasses section 1703.306 of the Occupations Code, which provides as follows:

(a) 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 other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

~~Occ. Code § 1703.306. We have marked the portions of the remaining submitted information that were acquired from polygraph examinations; this information is confidential under section 1703.306. Accordingly, the marked polygraph information in Exhibit D must generally be withheld under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, the remaining information does not~~

consist of polygraph information for the purposes of section 1703.306 of the Occupations Code. Therefore, none of the remaining information is confidential under section 1703.306, and the department may not withhold it under section 552.101 on that basis.

You assert that the submitted information includes criminal history record information ("CHRI"). Section 552.101 also encompasses laws that make CHRI confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* You claim the submitted information is CHRI excepted under chapter 411 of the Government Code. Upon review, however, none of the submitted information was generated by the NCIC or TCIC. Accordingly, we find you have not demonstrated how any portion of Exhibit E constitutes CHRI for purposes of chapter 411, and no portion of this information may be withheld on this basis.

You claim that portions of the information in Exhibit B are excepted from disclosure under section 552.130 of the Government Code. This section excepts from public disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the department must generally withhold the Texas motor vehicle information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.

However, we note, and you acknowledge, that the requestor is a Department of State Health Services (the "DSHS") investigator. The requestor has informed the department that DSHS seeks the requested information as part of an investigation pursuant to chapter 773 of the Health and Safety Code. Section 773.0612 provides that the DSHS or its representative "is entitled to access to records and other documents . . . that are directly related to . . . emergency medical services personnel to the extent necessary to enforce [chapter 773 of the Health and Safety Code] and the rules adopted under [chapter 773 of the Health and Safety Code]." Health & Safety Code § 773.0612(a). The submitted information pertains to an emergency medical technician/paramedic licensed under chapter 773 of the Health and Safety Code. Because the submitted information is directly related to emergency medical services ("EMS") personnel and the requestor is conducting an investigation under chapter 773, we conclude that section 773.0612 of the Health and Safety Code applies to the submitted information. Accordingly, we will consider whether section 773 of the Health and Safety Code permits DSHS to obtain information that is otherwise protected by the exceptions discussed above.

With regard to the submitted W-4 forms, we noted above that these forms are confidential pursuant to section 6103(a) of title 26 of the United States Code. Also, with regard to the submitted I-9 forms, we noted above that these forms are confidential pursuant to

section 1324a of title 8 of the United States Code. As federal laws, sections 6103(a) and 1324a preempt any conflicting state provisions, including section 773.0612 of the Health and Safety Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Accordingly we find that, notwithstanding section 773.0612 of the Health and Safety Code, the submitted W-4 forms in Exhibit H are confidential pursuant to section 6103(a) of title 26 of the United States Code and the submitted I-9 forms in Exhibit G are confidential pursuant to section 1324a of title 8 of the United States Code. Thus, they must be withheld under section 552.101 of the Government Code.

With respect to the information protected from public disclosure by section 159.002 of the MPA, section 560.003 of the Government Code, section 1703.306 of the Occupations Code, and section 552.130 of the Government Code, we find there is a conflict between these statutes and the right of access afforded to DSHS under section 773.0612 of the Health and Safety Code. Where general and specific provisions are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Gov't Code* § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Although section 773.0612 of the Health and Safety Code generally allows access to information pertaining to emergency services personnel, section 159.002 of the MPA specifically protects medical records, section 560.003 of the Government Code specifically protects fingerprints, section 1703.306 of the Occupations Code specifically protects polygraph examination results, and section 552.130 of the Government Code specifically protects Texas motor vehicle record information. These confidentiality provisions specifically permit release to certain parties and in certain circumstances that do not include DSHS's request in this instance. We therefore conclude that, notwithstanding 773.0612, the department must withhold from disclosure under section 552.101 of the Government Code the information that is confidential under section 159.002 of the MPA, section 560.003 of the Government Code, section 1703.306 of the Occupations Code, and the Texas motor vehicle information that is confidential under section 552.130 of the Government Code. *See Open Records Decision No. 629 (1994)* (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission).

In summary, the department must withhold the tax return information in Exhibit H under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The department must withhold the employment eligibility forms in Exhibit G under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The medical records in Exhibit C may only be released in accordance with the MPA. The department must withhold the fingerprints we have

marked in Exhibit F under 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the polygraph examination results we have marked in Exhibit D under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The department must withhold the Texas motor vehicle information you have marked, in addition to the information we have marked, under section 552.130 of the Government Code.² The department must release the remaining information to DSHS pursuant to section 773.0612 of the Health and Safety Code.

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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 359805

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

²We note the submitted information contains social security numbers subject to section 552.147 of the Government Code. 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).