



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2009

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2009-16347

Dear Mr. Griffith:

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# 361744.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a named police officer. You state the town will release 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, 552.137, 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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 (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 the Department of Public Safety ("DPS") maintains, except that the 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 -.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. Upon review, we agree that a portion of the information, which we have marked, consists of CHRI which must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. However, we find that none of the remaining information constitutes CHRI for the purposes of chapter 411. Therefore, the town may not withhold any portion of the remaining information on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-165.160. 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). Upon review, we conclude that no portion of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician for the purposes of the MPA. Thus, the town may not withhold any of the remaining information under the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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. Because there is a legitimate public interest in the qualifications and job performance of public employees, the department may not withhold this information

from disclosure based on a right of privacy. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow). In addition, this office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). Further, this office has found that medical information or information indicating disabilities or specific illnesses is 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).

Upon review, we find that some of the submitted information is highly intimate or embarrassing and not of legitimate public concern. However, the requestor has submitted a notarized consent to release form signed by the named officer in which the named officer authorizes the requestor to obtain information pertaining to him. Thus, the requestor is the authorized representative of one of the individuals whose privacy interests are at issue. Section 552.023 of the Government Code gives an individual's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information. *See* Gov't Code § 552.023. Accordingly, in this instance, the requestor has a special right of access to the named officer's private information, and the town may not withhold that information under section 552.101 in conjunction with common-law privacy. *See id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). The town must withhold the personal financial information, which we have marked, that pertains to individuals other than the named officer under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining information is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from required public disclosure the current and former home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). However, section 552.117 protects personal privacy and, as noted above, the requestor is the authorized representative of the officer at issue. Thus, the requestor has a right of access under section 552.023 of the Government Code to any personal information relating to the named officer that the town would otherwise be required to withhold from the public under

section 552.117(a)(2). *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, the town may not withhold any of the submitted information pertaining to the named police officer under section 552.117(a)(2).<sup>1</sup>

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. Gov't Code § 552.130(a)(1), (2). We note that section 552.130 of the Government Code does not apply to out-of-state motor vehicle information. Upon review, we find that none of the remaining information is subject to section 552.130 and none of it may be withheld on that basis.

Section 552.137 of the Government Code states that "an e-mail address of 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. *Id.* § 552.137(c). We note that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business. Furthermore, because a person may consent to the public disclosure of his or her e-mail address, we find the person has a right of access to his or her own e-mail address. *See id.* § 552.137(b). We note that one of the e-mail addresses at issue belongs to the named police officer. As noted above, the requestor is the authorized representative of the named officer. Therefore, pursuant to section 552.137(b), the town may not withhold the named officer's personal e-mail address from this requestor under section 552.137(a). *See id.* § 552.137(b). Accordingly, the town must withhold the only e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

Finally, you raise section 552.147 of the Government Code. Section 552.147 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. We note that section 552.147 also protects personal privacy. Thus the requestor, as the authorized representative of the named officer, has a right to the officer's social security number and it may not be withheld from him pursuant to section 552.147. *Id.* § 552.023(b). Therefore, the town may withhold only the social security numbers pertaining to individuals other than the named officer under section 552.147.

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<sup>1</sup>We note that, if the officer at issue is not a currently licensed police officer under section 2.12 of the Code of Criminal Procedure, the requestor would likewise have a right of access pursuant to section 552.023 of the Government Code to any information the town would otherwise be required to withhold from the public under section 552.117(a)(1) of the Government Code.

We note the remaining information contains information acquired from a polygraph examination. Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides in part:

(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[.]

Occ. Code § 1703.306. We have marked information acquired from a polygraph examination that is confidential under section 552.101 in conjunction with section 1703.306. We note that the town has the discretion to release the marked information to the polygraph examinee or his authorized representative pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees).

In summary, the town 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 common-law privacy. The town must withhold the information we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure. The town may withhold the social security numbers pertaining to individuals other than the named officer under section 552.147 of the Government Code. The marked information that was acquired from a polygraph examination is confidential under section 1703.306 of the Occupations Code, but the town has the discretion to release the marked information to the polygraph examinee or his authorized representative pursuant to section 1703.306(a)(1). The remaining information must be released to this requestor.<sup>2</sup>

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

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<sup>2</sup>We note that the information being released contains confidential information to which the requestor has a right of access. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the town receives another request for this particular information from a different requestor, then the town should again seek a decision from this office.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 361744

Enc. Submitted documents

c: Requestor  
(w/o enclosures)