



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 16, 2010

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County Attorney's Office  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2010-02269

Dear Ms. Rangel:

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# 370297.

The Fort Bend County Sheriff's Office and Fort Bend County Constable, Precinct 4 (collectively the "county") each received a request for the entire personnel file of a named officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, pertains to an officer other than the officer named in the requests. Accordingly, this information is not responsive to the instant requests for information. This ruling does not address the public availability of any information that is not responsive to the requests and the county need not release such information in response to these requests.

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. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) 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 his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, 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 with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, 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). Consequently, the county must withhold the submitted W-4 form in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which provides the following:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). You assert that Exhibit D includes information which is excepted from disclosure under section 1701.306 of the Occupations Code. Section 1701.306 specifically applies to the information contained in an L-2 Declaration of Medical Condition form and an L-3 Declaration of Psychological and Emotional Health form. Based on our review, we find that the L-2 declarations we have marked in Exhibit D are confidential under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. Thus, the county must withhold the information we have marked in Exhibit D on that basis. However, no portion of the remaining information constitutes an L-2 or L-3 Declaration Form. Accordingly, none of the remaining information may be withheld on that basis.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which 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 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. You assert that the information in Exhibit D is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. In this instance, the officer at issue did not resign due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We, therefore, conclude that the county must withhold the submitted F-5 forms in Exhibit D, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. You also seek to withhold L-1 forms pursuant to section 1701.454. However, L-1 forms are not required to be filed with TCLEOSE pursuant to subchapter J of chapter 1701. Therefore, the L-1 forms may not be withheld under section 552.101 in conjunction with section 1701.454 of the Occupations Code. Furthermore, none of the remaining information in Exhibit D constitutes an F-5 form for purposes of section 1701.454 of the Occupations Code. Thus, the county may not withhold any of the remaining information in Exhibit D pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses federal law such as the Family Medical Leave Act (the "FMLA"), section 2654 of title 29 of the United States Code. Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states:

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

(2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). We note a portion of the submitted documents, which we have marked, is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find none of the release provisions of the FMLA apply to this information. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FMLA.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code, which governs access to medical records. 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.

Occ. Code § 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)-(c); *see also* Open Records Decision No. 598 (1991). We agree that the submitted information includes medical records that may only be disclosed in accordance with the MPA. We have marked the information subject to the information subject to the MPA. However, none of the remaining information constitutes a physician-patient communication or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the county may not withhold any of the remaining information under section 552.101 in conjunction with the MPA.

Section 552.101 also encompasses section 550.065 of the Transportation Code.<sup>1</sup> The submitted information contains ST-3 accident report forms completed pursuant to

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<sup>1</sup>The 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).

chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the county with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the county must withhold the submitted ST-3 accident report forms, which we have marked, under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also incorporates 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. 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 personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 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), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We have marked information that must be withheld under section 552.101 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 numbers, and family member information regarding a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.<sup>2</sup> Gov't Code § 552.117(a)(2).

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<sup>2</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Accordingly, the county must withhold the information we have marked pursuant to section 552.117(a)(2).<sup>3</sup>

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Therefore, the county must withhold the copy of a Texas driver's license, driver's license numbers, driver's license expiration date, vehicle identification numbers, and license plate numbers we have marked under section 552.130.

We note that some of the remaining information is excepted from public disclosure under section 552.136 of the Government Code. This section states that "[n]otwithstanding any other provision of this chapter, 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. This office has concluded that insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the county must withhold the insurance policy numbers we have marked under section 552.136.

We note that we have marked information that is subject to section 552.137 of the Government Code. Section 552.137 provides 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. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The e-mail address we have marked is not of the type specifically excluded by section 552.137(c). Accordingly, the marked e-mail address must be withheld under section 552.137 of the Government Code unless its owner consents to its disclosure.

In summary, the county must withhold the following under section 552.101 of the Government Code: 1) the W-4 form in conjunction with section 6103(a) of title 26 of the United States Code; 2) the L-2 Medical Declaration forms we have marked in conjunction with 1701.306 of the Occupations Code; 3) the marked F-5 forms in conjunction with section 1701.454 of the Occupations Code; 4) the information we have marked in conjunction with the FMLA; 5) the ST-3 accident report forms in conjunction with section 550.065 of the Government Code; and 6) the marked information in conjunction with common-law privacy. The marked medical records may only be disclosed in accordance with the MPA. The county also must withhold the information we have marked pursuant to

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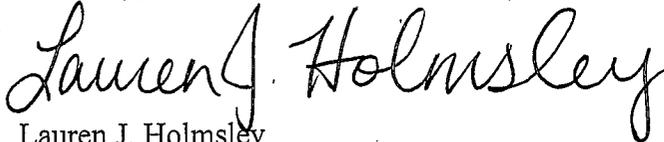
<sup>3</sup>As our ruling is dispositive for this information, we need not address your arguments under section 552.147 of the Government Code.

sections 552.117(a)(2), 552.130, 552.136, and 552.137 of the Government Code.<sup>4</sup> 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](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,



Lauren J. Holmsley  
Assistant Attorney General  
Open Records Division

LJH/jb

Ref: ID# 370297

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including: W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code; L-2 forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; a Texas driver's license number, a copy of a Texas driver's license, and a Texas license plate number under section 552.130; an insurance policy number under section 552.136 of the Government Code, and e-mail addresses under section 552.137 of the Government Code without the necessity of requesting an attorney general decision.