



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 10, 2010

Ms. Moira Schilke  
Assistant District Attorney  
Denton County  
P.O. Box 2850  
Denton, Texas 76202

OR2010-03471

Dear Ms. Schilke:

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# 372550.

Denton County (the "county") received a request for all records or documents in the custody of the county in reference to the requestor, all documents in response to the requests and grievances submitted by the requestor while he was an inmate at the county jail, certain information regarding the personnel that worked at specific pods during a specific time period, the personnel and employment records of eight identified groups or individuals, and certain information regarding ten identified groups or individuals. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, 552.119, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, section 552.117 is the proper exception for information that the county holds in its capacity as an employer.

<sup>2</sup>We 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.

Initially, you acknowledge, and we agree, the county failed to request a ruling or submit the responsive information within the statutory time periods prescribed by sections 552.301(b) and 552.301(e) of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because sections 552.101, 552.117, 552.119, and 552.130 of the Government Code can provide compelling reasons to withhold information, we will consider their applicability to 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. Section 552.101 encompasses section 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 "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 submitted I-9 forms and attached social security card and driver's license under the Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we find the submitted I-9 forms and attached social security cards and Texas driver's licenses are confidential under section 552.101 of the Government Code, and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The submitted information also contains L-2 Declaration of Medical Condition forms required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides the following:

(a) [TCLEOSE] 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 [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Thus, we determine that the county must withhold the submitted L-2 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

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 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.

*Id.* § 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 county 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.

Section 552.101 also encompasses criminal history records information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* 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 DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. We note that the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find that the information we have marked consists of CHRI for the purposes of chapter 411. Accordingly, the county must withhold this information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, no portion of the remaining information consists of CHRI for the purposes of chapter 411. Accordingly, the county may not withhold any of this information under section 552.101 on that basis.

Section 552.101 also encompasses chapter 560 of the Government Code, which governs the public availability of fingerprints. Section 560.003 of the Government Code provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* §§ 560.003; .001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Thus, the county must withhold the biometric information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses chapter 730 of the Transportation Code. You raise section 730.004, which provides that:

Notwithstanding any other provisions of law to the contrary, including chapter 552, Government Code, except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Section 730.003 provides that, for purposes of chapter 730:

(1) “Agency” includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency of this state, that compiles or maintains motor vehicle records.

...

(4) “Motor vehicle record” means a record that pertains to a motor vehicle operator’s or driver’s license or permit, motor vehicle registration, motor vehicle title, or identification document issued by an agency of this state or a local agency authorized to issue an identification document. The term does not include:

- (A) a record that pertains to a motor carrier; or
- (B) an accident report prepared under Chapter 550 or 601.

*Id.* § 730.003(1), (4). Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established that the county compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the county. Accordingly, the county may not withhold any part of the requested information under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code. *See Open Records Decision No. 478 at 2 (1987)* (language of confidentiality statute controls scope of protection).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See 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 demonstrated. *See id.* At 681-82. 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 Nos. 600 (1992), 545 (1990), 373 (1983)*. For example, information related to an individual’s mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See Open Records Decision Nos. 545, 523 (1989)*. The information we have marked constitutes personal financial information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, the county must withhold the information we have marked under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See Gov’t Code § 552.117(a)(2); Open Records Decision No. 622 (1994)*. We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). In this case, it is unclear whether the individuals whose personal information we have marked are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individuals whose information we have marked are licensed peace officers as defined by article 2.12, the county must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code.

If the individuals are not currently licensed peace officers, section 552.117(a)(1) may apply to the information at issue, as well as to information relating to other former or current employees. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). We have marked personal information pertaining to the employees at issue that is subject to section 552.117(a)(1). You inform us the individuals at issue timely elected confidentiality pursuant to section 552.024. Accordingly, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code. You have failed to demonstrate, however, the applicability of section 552.117 to the remaining information you have marked; thus, that information may not be withheld under section 552.117(a)(1).

You assert that the submitted information contains sheriff's department photographs which should be withheld from disclosure under section 552.119 of the Government Code, which provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

Gov't Code § 552.119. Upon review, we find that the county has failed to demonstrate that release of the photographs would endanger the officers' lives or physical safety. Accordingly, the photographs at issue may not be withheld under section 552.119 of the Government Code.

Next, you raise section 552.130 of the Government Code against disclosure of a portion of the submitted information. Section 552.130 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). Accordingly, the county must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. However, the remaining information you have marked may not be withheld under section 552.130.

We note the remaining information also contains a military discharge form. Section 552.140 of the Government Code provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may be disclosed only in accordance with section 552.140 or a court order.<sup>3</sup> *See id.* § 552.140(a), (b). You do not inform us when the county came into possession of the submitted discharge form. Therefore, if the submitted military discharge form came into the possession of the county on or after September 1, 2003, the county must withhold this form in its entirety under section 552.140. Conversely, if the county received the form before September 1, 2003, the county may not withhold the form pursuant to section 552.140.

In summary, the county must withhold the following information under section 552.101 of the Government Code: 1) the submitted I-9 forms and the attached social security cards and Texas driver's licenses in conjunction with section 1324a of title 8 of the United States Code, 2) the submitted L-2 declaration forms in conjunction with section 1701.306 of the Occupations Code, 4) the submitted F-5 form in conjunction with section 1701.454 of the Occupations Code, 5) the CHRI we have marked in conjunction with section 411.083 of the Government Code, 6) the biometric information we have marked in conjunction with section 560.003 of the Government Code, and 7) the information we have marked under common-law privacy. The county must withhold the personal information we have marked under section 552.117(a)(2), to the extent the individuals whose information is at issue are licensed peace officers. To the extent the individuals at issue are not license peace officers, then the county must withhold the personal information we have marked under section 552.117(a)(1). The county must withhold the driver's license information we have marked under section 552.130 of the Government Code. If the submitted military discharge form came into the possession of the county on or after September 1, 2003, the county must

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold this form in its entirety under section 552.140. The remaining information must be released.<sup>4</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 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 372550

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 I-9 forms under section 552.101 of the Government Code in conjunction with 8 U.S.C. § 1324a, L-2 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, Texas driver's licenses and Texas driver's license numbers under section 552.130 of the Government Code, and military veteran's DD-214 forms or other military discharge records that are first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.