



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2010

Ms. Jenny Gravley
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2010-04915

Dear Ms. Gravley:

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# 375123.

The Southlake Department of Public Safety (the "department"), which you represent, received a request for the personnel file of Dana L. Davis. You indicate the department has released some of the requested information to the requestor with redactions pursuant to Open Records Decision No. 684 (2009) and section 552.147 of the Government Code.¹ You also state some information in the submitted documents will be withheld pursuant to Open Records Decision No. 684. You claim marked portions of the submitted documents are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies which authorizes withholding of ten categories of information, including a direct deposit authorization form under section 552.101 of the Government Code in conjunction with common-law privacy; W-2 and W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States 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; and an insurance policy number, bank account number, and bank routing number under section 552.136, without the necessity of requesting an attorney general decision. 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.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information 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 met. *Id.* at 681-82.

Common-law privacy protects certain personal financial information from disclosure. This office has found information that reveals personal financial decisions an employee makes regarding optional health and insurance coverages may generally be protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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). Additionally, information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision No. 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body). Upon review, we agree the information which concerns elections of optional health and retirement coverages reflects personal financial decisions made by the employee. Therefore, the department must withhold this information pursuant to section 552.101 in conjunction with common-law privacy. The department also must withhold the documents which provide background financial information about the employee for which there is no legitimate public interest. *See generally* ORD 523. This office has also determined that a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (stating net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about given individual that is not of legitimate concern to public). Therefore the employee's net pay also must be withheld under section 552.101 in conjunction common-law privacy.

This office has found, however, the public has a legitimate interest in facts about a financial transaction between an individual and a governmental body. *See* ORD 545 at 4 (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). The submitted documents reflect that the employee's medical, dental, long-term disability, accidental death and dismemberment, and non-voluntary life insurance benefits are paid by the department. This office has stated there is a legitimate public interest in an employee's participation in an insurance or retirement program funded in whole or in part by a governmental body. *See* ORD 600 at 9-12 (identifying public and private portions of certain state personnel records). Accordingly, records relating to such programs do not constitute confidential personal financial

information and may not be withheld in their entirety under common-law privacy. However, some of the information contained in these records reflects specific financial decisions made by the employee, in which the public has no legitimate interest. We have marked the information in these records which must be withheld under section 552.101 in conjunction with common-law privacy. Some of the remaining information you marked as personal financial information concerns the employee's job performance and conditions for her continued employment. This office has found the public has a legitimate interest in a public employee's qualifications and job performance. *See* Open Records Decision No. 405 at 2-3 (1983) (public has interest in manner in which public employee performs job); *see also* Open Records Decision Nos. 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, this information may not be withheld on the basis of common-law privacy.

You have marked additional information you assert is protected under common-law privacy. You seek to withhold a portion of this information in accordance with the ruling in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), which addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment in an employment context. The information you seek to withhold does not pertain to an investigation of sexual harassment conducted by the department, but rather is a reference to an investigation conducted by another entity. Therefore, the privacy concerns expressed in *Ellen* do not apply to this information. Some of this information, however, which we marked, is highly intimate or embarrassing and not of legitimate public interest. Therefore this information must be withheld under section 552.101 in conjunction with common-law privacy. We also agree some of the remaining information you marked is highly intimate and embarrassing and not of legitimate public interest. This information, which we marked, must also be withheld under section 552.101 in conjunction with common-law privacy. You have not, however, provided any arguments explaining how the remaining information you marked under section 552.101 is protected under common-law privacy. Therefore this information may not be withheld under section 552.101 on that basis.

You assert a compilation of the employee's criminal history you marked is excepted from disclosure pursuant to section 552.101 of the Government Code. Although this office has found a compilation of a private citizen's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, there is a legitimate public interest in an applicant's background and qualifications for government employment, especially in this instance where the applicant was seeking a position in law enforcement. *See* ORD 562 at 10, 542 at 5; *see also* ORD 423 at 2; *cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989). Therefore this information may not be withheld under section 552.101 on the basis of common-law privacy. You assert, however, that some of this information is confidential under section 552.101 in conjunction with chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is subject to section 552.101 of the Government Code. 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 have marked the CHRI that was generated by the NCIC or TCIC. This information must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The records reflect, however, that the remaining information you seek to withhold was not generated by the NCIC or TCIC. Accordingly this information is not confidential under section 552.101 and must be released.

You have also marked information you seek to withhold under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Upon review, we agree the department must withhold the home addresses, telephone numbers, and family member information you marked, and the additional information we marked, pursuant to section 552.117(a)(2). We note you marked an individual as a family member of the employee. The submitted documents, however, reflect this individual is not related to the employee. Therefore this individual's information may not be withheld under section 552.117(a)(2). Furthermore, you have not explained, nor can we discern, the applicability of section 552.117 to the remaining information you marked; thus, that information may not be withheld under section 552.117(a)(2).

Some of your markings under sections 552.130 and 552.136 of the Government Code are not covered by Open Records Decision No. 684, therefore we will address the applicability of these exceptions to these markings. Section 552.130 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). We agree the driver's license expiration date, and space indicating class type you marked, and the additional spaces indicating class type we marked, must be withheld under section 552.130. However, the remaining information you marked under section 552.130 may not be withheld under this exception.

Section 552.136 of the Government Code 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.” Gov’t Code § 552.136(b). The check number you marked under section 552.136 does not constitute an access device number and may not be withheld based on section 552.136.

In summary, the department must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The department must withhold the information we marked under section 552.101 in conjunction with chapter 411 of the Government Code. The department must withhold the marked home addresses, telephone numbers, and family member information pursuant to section 552.117(a)(2) of the Government Code. The department must withhold the marked driver’s license expiration date and spaces indicating class type under section 552.130 of the Government Code. The remaining information must be released.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/cc

Ref: ID# 375123

Enc. Submitted documents

c: Requestor
(w/o enclosures)