



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2010

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2010-06688

Dear Ms. McClellan:

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# 378774 (DPD No. 2010-1731).

The Dallas Police Department (the "department") received a request for information pertaining to a named former peace officer. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.²

Initially, we note that a portion of the submitted information, which we have marked, is not responsive to the instant request for information because it does not pertain to the named former peace officer. The department need not release nonresponsive information in response to this request, and this ruling will not address that information.

¹We note that although you raise sections 552.103, 552.108, 552.111, 552.1175, 552.127, and 552.137 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these sections apply to the submitted information.

²We note the department has redacted a social security number from the submitted information pursuant to section 552.147(b) of the Government Code, which 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.

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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center 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.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except 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. Similarly, 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. *See id.* § 411.082(2)(B).. Accordingly, the department must withhold the CHRI we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.

Section 552.101 also encompasses section 560.003 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints and records of hand geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). The submitted information includes the former officer's fingerprints. You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprints in this instance. Therefore, the department must withhold the submitted fingerprints, which 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 section 58.007 of the Family Code, which you assert for portions of the submitted information. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. We note that section 58.007 is inapplicable in this instance because the juvenile conduct at issue occurred in 1993. However, former section 51.14 of the Family Code is applicable to this information. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by the former section 51.14(d), which was continued in effect

for that purpose. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Section 51.14 applies to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Former section 51.14 provided in relevant part as follows:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

Id. § 51.14 (repealed 1995). The information we marked concerns juvenile delinquent conduct that occurred prior to January 1, 1996. Therefore, this information is confidential under former section 51.14(d) of the Family Code and must be withheld in its entirety pursuant to section 552.101 of the Government Code. However, the remaining information you have marked does not consist of law enforcement records and may not be withheld under section 552.101 on the basis of section 51.14 or 58.007.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (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(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). 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 find a portion of the submitted information consists of medical records that are subject to the MPA. Accordingly, we have marked the medical records that may only be released in accordance with the MPA. However, you have failed to demonstrate how any of the remaining information constitutes a medical record for purposes of the MPA. Therefore, the remaining information is not confidential under the MPA, and no portion of it may be withheld under section 552.101 on this basis.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which makes confidential EMS records. Section 773.091 provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). You assert portions of the remaining information are confidential under section 773.091. However, none of the remaining information was created by emergency medical services (“EMS”) personnel or by a physician providing medical supervision. Consequently, we find you have failed to demonstrate how any of the remaining information constitutes records of the identity, evaluation, or treatment of a patient created by EMS personnel or a physician providing medical supervision. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

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). The type of information considered highly intimate or 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. This office has found that a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest

in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of public employee's resignation or termination), 423 at 2 (1984) (explaining that because of greater legitimate public interest in disclosure of information regarding public employees, employee privacy under section 552.102 is confined to information that reveals "intimate details of a highly personal nature"); *see also* Gov't Code § 552.022(a)(2) (name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of governmental body are public information). Additionally, this office has determined that common-law privacy protects the identities of juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007(c).

Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The department has failed to demonstrate, however, how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, the remaining information contains personal information concerning a peace officer who is no longer employed by the department and other peace officers who may no longer be employed by the department. It is unclear whether these individuals are currently licensed peace officers as defined by article 2.12. Accordingly, if the officers at issue are currently licensed peace officers as defined by article 2.12, then the department must withhold the information you have marked and the information we have marked pursuant to section 552.117(a)(2) of the Government Code.

If the individuals at issue are no longer licensed peace officers, then the personal information at issue may be subject to section 552.117(a)(1) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. The submitted documents reflect that the named former officer timely elected confidentiality under section 552.024. Accordingly, if the named former officer is no longer a licensed police officer, then the department must withhold the information you have marked, as well as the information we have marked, pertaining to the former officer under section 552.117(a)(1). Further, to the extent the other officers at issue are no longer licensed police officers and they timely requested confidentiality under section 552.024, the department must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(1).

You assert some of the remaining information, which you have marked, is excepted from disclosure under section 552.130 of the Government Code, which provides 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 agree the department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

Finally, you assert some of the remaining information is protected by section 552.136 of the Government Code, which provides that "[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining "access device"). You inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. Thus, we find the department must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with (1) chapter 411 of the Government Code; (2) section 560.003 of the Government Code; and (3) former section 51.14(d) of the Family Code. The medical records we have marked may only be released in accordance with the MPA. The department must withhold the information we marked under section 552.101 in conjunction with common-law privacy. If the officers at issue are currently licensed peace officers, then the department must withhold the information you have marked and the information we have marked pursuant to section 552.117(a)(2) of the Government Code. If the named former officer is no longer a licensed peace officer, then the department must withhold the information you have marked, as well as the information we have marked, pertaining to the former officer under

section 552.117(a)(1) of the Government Code. Further, to the extent the other officers at issue are no longer licensed peace officers and they timely requested confidentiality under section 552.024, the department must withhold the information you have marked and the information we have marked under section 552.117(a)(1). The department must withhold the Texas motor vehicle information you have marked under section 552.130 of the Government Code.³ The department must also withhold the marked employee identification numbers under section 552.136 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 378774

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.