



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2010

Mr. Robert T. Bass  
Allison, Bass & Associates, L.L.P.  
402 West 12<sup>th</sup> Street  
Austin, Texas 78701

OR2010-12690

Dear Mr. Bass:

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# 391314.

The Titus County Sheriff's Department (the "sheriff"), which you represent, received a request for the requestor's personnel file. You state you have released some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.103, 552.108, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information submitted at Tab 3 includes an I-9 form. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This section encompasses information protected by other statutes. The submitted information contains an I-9 form (Employment Eligibility Verification), which is governed by section 1324a of title 8 of the United States Code. This section provides that an I-9 form and "any information contained in or appended to such form, 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 form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude the submitted I-9

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

form, which we have marked, is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which provides in relevant part:

(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). The sheriff must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we marked in Tab 3 under section 552.101 in conjunction with section 1701.306.

We note Tab 3 also contains a F-5 ("Report of Separation of Licensee") report. Section 552.101 also encompasses section 1701.454 of the Occupations Code, which provides as follows:

(a) A report or statement submitted to the [Texas Commission on Law Enforcement Officer Standards and Education] 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 [Texas Commission on Law Enforcement Officer Standards and Education] member or other person may not release the contents of a report or statement submitted under this subchapter.

*Id.* § 1701.454. The F-5 report in Tab 3 does not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff must withhold the F-5 report we marked pursuant to section 552.101 in conjunction with section 1701.454 of the Occupations Code.

Next, we address your arguments against the disclosure of the recordings submitted as Exhibits 4-A and 4-B. Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (Gov't Code § 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The recordings submitted as Exhibits 4-A and 4-B contain surveillance videos from inside the Titus County Jail and statements from a confidential inmate informant. You state these recordings are "extremely valuable to the sheriff and its efforts to curtail gang activity, contraband and other unlawful items and behaviors" within the jail. You also state these recordings reveal law enforcement methods, techniques, and strategies. Thus, you assert that release of this information would interfere with law enforcement and crime prevention. Based on your representations and our review, we find that release of Exhibits 4-A and 4-B would interfere with law enforcement. Accordingly, the sheriff may withhold Exhibits 4-A and 4-B under section 552.108(b)(1) of the Government Code.<sup>2</sup>

In summary, the sheriff must withhold the following under section 552.101 of the Government Code: (1) the I-9 form we have marked in conjunction with section 1324a of

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<sup>2</sup>As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure.

title 8 of the United States Code; (2) the L-2 and L-3 declarations we marked in conjunction with section 1701.306 of the Occupations Code; and (3) the F-5 report we marked in conjunction with section 1701.454 of the Occupations Code.<sup>3</sup> The sheriff may withhold Exhibits 4-A and 4-B under section 552.108(b)(1) of the Government Code.

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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 391314

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</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 section 1324a of title 8 of the United States Code, and L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision.