



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2010

Mr. W. R. Hierholzer
Kerr County Sheriff's Office
400 Clearwater Paseo
Kerrville, Texas 78028

OR2010-15627

Dear Mr. Hierholzer:

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# 396876.

The Kerr County Sheriff's Office (the "sheriff") received a request for all personnel records pertaining to a named deceased deputy sheriff. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 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 information protected by other statutes. The submitted information contains L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health 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 encompassed by section 552.101 of the Government Code. Section 1701.306 provides:

(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

¹Although you also raise section 552.305 of the Government Code, this section is not an exception to disclosure. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties that their interests may be affected by a request for information. *See id.*

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 find the sheriff must withhold the L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the TCLEOSE. Section 1701.454 provides as follows:

(a) A report or statement submitted to the [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. The submitted information includes an F-5 Report of Separation of License Holder form. Therefore, the sheriff must withhold the submitted F-5 form, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center (the "TCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies 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 DPS may disseminate this information in accordance with 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 only release CHRI 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.* §§ 411.090-411.127. 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. We note that because the laws governing the dissemination of information obtained from NCIC and TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. Upon review, we have marked the portions of the submitted information that constitute CHRI generated by the NCIC or the TCIC. The sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. *See* Gov't Code § 411.083(b)(3).

You raise section 552.102(a) of the Government Code, which excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (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. *Id.* at 685. As noted above, the submitted information pertains to a deceased deputy sheriff. Because the common-law right to privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates to a deceased individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981). Consequently, none of the submitted information may be withheld on the basis of the deceased deputy's privacy interests. Additionally, you have not provided any arguments explaining how any part of the remaining information that pertains to a living individual is highly intimate or embarrassing. Thus, no part of the remaining information may be withheld on the basis of section 552.102.

Portions of the remaining information may be subject to section 552.117 of the Government Code. Section 552.117 provides in relevant part the following:

(a) Information is excepted from the requirements of [the Act] if it is information that relates to the home address, home telephone number, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable; [or]

...

(4) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law, a reserve law enforcement officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution in this state who was killed in the line of duty, regardless of whether the deceased complied with Section 552.024 or 552.1175[.]

Gov't Code § 552.117(a)(1)-(2); *see* Open Records Decision No. 622 (1994). Section 552.117(a)(2) applies to an individual who is a peace officer as defined by article 2.12 of the Code of Criminal Procedure. The submitted information pertains to a deceased deputy sheriff who, the information reflects, was such a peace officer. However, because this individual is now deceased, he is no longer a peace officer and section 552.117(a)(2) is not applicable. Additionally, because this individual was not killed in the line of duty, section 552.117(a)(4) is inapplicable in this instance. Section 552.117(a)(1), on the other hand, protects "current or former" employees and most of its protections are intended to protect the privacy of an employee's family members as well as that of the employee. Consequently, the protection of section 552.117(a)(1) generally does not lapse at an employee's death. Thus, we consider the applicability of section 552.117(a)(1) to the information at issue. However, because the protection of social security numbers under section 552.117 is intended solely to protect the privacy of the employee, that protection lapses at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229, H-917.

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 be withheld under section 552.117(a)(1) only on behalf of a current or former official or 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. We note that an individual's personal post

office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See* ORD 622 at 4 (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added)). Therefore, if the deceased deputy properly elected to withhold the home addresses, home telephone numbers, and family member information we marked, the sheriff must withhold this information under section 552.117(a)(1) of the Government Code. If the deceased individual did not so elect, the information we marked under section 552.117 must be released.

The sheriff seeks to withhold some of the remaining information under section 552.147 of the Government Code. The social security number of a living person is excepted from disclosure pursuant to section 552.147 of the Government Code. Gov't Code § 552.147(b). However, section 552.147(b) does not apply to the social security number of a deceased individual. *Id.* Therefore, the sheriff may not withhold the social security number in the submitted information, which belongs to the deceased deputy, under section 552.147 of the Government Code.

We marked a Texas license plate number and vehicle identification number pertaining to a vehicle owned by the sheriff under section 552.130 of the Government Code.² Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or Texas motor vehicle title or registration. *Id.* § 552.130(a)(1), (2). Therefore, the sheriff must withhold the information we marked under section 552.130 of the Government Code.

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." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we conclude the gas credit card number we have marked must be withheld under section 552.136.

In summary, the sheriff must withhold: (1) the L-2 and L-3 declarations we marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (2) the F-5 form we marked under section 552.101 of the Government

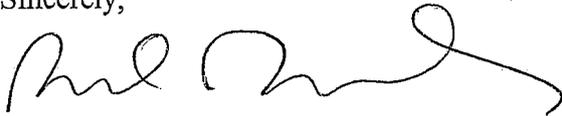
²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code in conjunction with section 1701.454 of the Occupations Code; (3) the CHRI we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (4) the Texas motor vehicle record information we marked under section 552.130 of the Government Code; and (5) the gas credit card number we marked under section 552.136 of the Government Code.³ The sheriff must also withhold the information we marked under section 552.117(a)(1) of the Government Code if the named deceased deputy sheriff properly elected to withhold this information. The remaining submitted 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 396876

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Open Records Decision No. 684 (2009) authorizes a governmental body to withhold ten categories of information, including L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, Texas license plate numbers under section 552.130 of the Government Code, and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.