



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2011

Ms. Michelle M. Fraga
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-00413

Dear Ms. Fraga:

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# 405279 (C.A. File No. 10GEN2457).

The Harris County Sheriff's Office (the "sheriff") received a request for the complete personnel file of a named employee. You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed 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 information that other statutes make confidential, such as section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of his income[.]" See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Consequently, the sheriff must withhold the W-4 form we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses the federal Fair Credit Reporting Act (the "FCRA"), 15 U.S.C. § 1681 *et seq.* Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person that the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See* 15 U.S.C. § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining "person" and "consumer report"). Section 1681b further provides that "[a] person shall not use or obtain a consumer report for any purpose unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification." *Id.* § 1681b(f). Section 1681e provides for the maintenance of procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See id.* § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (stating that federal law strictly limits distribution of consumer credit reports by credit reporting agencies). Upon review, we find the consumer report furnished to the sheriff by a consumer agency, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with the FCRA.

We note the submitted information includes Texas Peace Officer's Crash Reports completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the sheriff with any of the specified items of information. Accordingly, the sheriff must withhold the submitted Texas Peace Officer's Crash Reports in their entirety under section 552.101 of the Government Code in conjunction with chapter 550 of the Transportation Code.

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 relevant 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 id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded 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 the information we have marked constitutes medical records, which may be released only in accordance with the MPA.

Section 552.101 also 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.* at 10–12. Section 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See* Gov’t Code § 411.089(b)(1). Upon review, we find the information we have marked constitutes CHRI that must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officers Standards and Education (“TCLEOSE”), and 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.

Occ. Code § 1701.454. The submitted information contains an F-5 "Report of Separation of License Holder" report. Therefore, the sheriff must withhold the F-5 form 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 also encompasses section 1703.306 of the Occupations Code, which provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Id. § 1703.306. The requestor does not fall within any of the enumerated categories; therefore, the sheriff must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, you have not demonstrated the remaining information you have marked was acquired from a polygraph examination; thus, it may not be withheld on the basis of section 1703.306.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and

circumstances in which they can be released), .003 (biometric identifiers in the possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information in this instance. Therefore, the sheriff must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You also claim the submitted information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code. The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (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).

We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked is highly intimate or

embarrassing and not of legitimate public concern. Accordingly, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information is not highly or embarrassing information of no legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(2) of the Government Code excepts “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The records at issue are personnel documents maintained by the sheriff for administrative purposes. You do not provide any arguments explaining how the personnel documents at issue relate to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Accordingly, you have failed to demonstrate that section 552.108 applies. Thus, the sheriff may not withhold any portion of the remaining information under section 552.108(a)(2) of the Government Code.

Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, 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). 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 information at issue concerns an individual who may no longer be employed by the sheriff, and it is unclear whether this individual is currently a licensed peace officer as defined by article 2.12. Accordingly, if the individual whose information we have marked is currently a licensed peace officer as defined by article 2.12, then the sheriff must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code. However, the sheriff may not withhold any of the remaining information on this basis. Conversely, to the extent the individual at issue is no longer a licensed peace officer as defined by article 2.12, then the sheriff may not withhold the marked information under section 552.117(a)(2).

If the individual at issue is no longer a licensed peace officer, then the marked personal information 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 id.* § 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual at issue timely requested confidentiality under section 552.024, the sheriff must withhold the information we have marked under section 552.117(a)(1). Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the sheriff may not withhold the marked information under section 552.117(a)(1).

Section 552.1175 of the Government Code provides in pertinent part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). We have marked the information that may be subject to section 552.1175. If the individuals at issue are currently peace officers and elect to restrict access to this information in accordance with section 552.1175 of the Government Code, the sheriff must withhold the information we have marked. Otherwise, this information must be released.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this

state [or] a motor vehicle title or registration issued by an agency of this state.”¹ *Id.* § 552.130(a)(1), (2). Accordingly, the sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states, “[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; *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the sheriff must withhold the insurance policy number and credit card number we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)–(c). Upon review, we find the sheriff must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to its release.

Section 552.140 of the Government Code provides in part:

- (a) This section applies only to a military veteran’s Department of Defense Form DD-214 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.

Id. § 552.140(a). Section 552.140 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 in accordance with a court order. *See id.* § 552.140(a)–(b). Upon review, we find the sheriff must withhold the DD-214 form we have marked under section 552.140.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). The sheriff may withhold the social security numbers you have marked in the remaining information under section 552.147 of the Government Code.²

¹The 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).

²We note 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(b).

In summary, the sheriff must withhold the following information under section 552.101 of the Government Code: (1) the W-4 form we have marked in conjunction with section 6103(a) of title 26 of the United States Code; (2) the consumer report we have marked in conjunction with the FCRA; (3) the Texas Peace Officer's Crash Reports in conjunction with section 550.065 of the Transportation Code; (4) the medical records we have marked in conjunction with the MPA; (5) the CHRI we have marked in conjunction with section 411.083 of the Government Code; (6) the F-5 "Report of Separation of License Holder" report we have marked in conjunction with section 1701.454 of the Occupations Code; (7) the polygraph information we have marked in conjunction with section 1703.306 of the Occupations Code; (8) the fingerprints we have marked in conjunction with section 560.003 of the Government Code; and (9) the information we have marked in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.102(a) of the Government Code. The sheriff also must withhold (1) the information we have marked under section 552.117(a)(2) of the Government Code, if the individual at issue is currently a licensed peace officer as defined by article 2.12; (2) the information we have marked under section 552.117(a)(1) of the Government Code, if the individual at issue is no longer a licensed peace officer and timely requested confidentiality under section 552.024 of the Government Code; (3) the information we have marked under section 552.1175 of the Government Code, if the individuals are currently peace officers and elect to restrict access to this information; (4) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; (5) the insurance policy number and credit card number we have marked under section 552.136 of the Government Code; (6) the e-mail address we have marked under section 552.137 of the Government Code, unless the owner consents to its release; and (7) the DD-214 form we have marked under section 552.140 of the Government Code.³ The sheriff may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining information must be released.

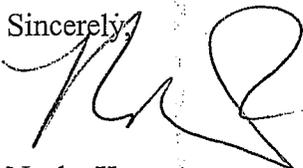
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; a Texas driver's license number, Texas license plate number, and a copy of a Texas driver's license under section 552.130 of the Government Code; insurance policy and credit card numbers under section 552.136 of the Government Code; an e-mail address of a member of the public under section 552.137 of the Government Code; and a Form DD-214 that is first recorded or 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.

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,

A handwritten signature in black ink, appearing to be 'Nneka Kanu', written over the word 'Sincerely,'.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 405279

Enc. Submitted documents

cc: Requestor
(w/o enclosures)