



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2011

Ms. Myrna S. Reingold
Galveston County Legal Department
County Courthouse
722 Moody, Fifth Floor
Galveston, Texas 77550-2317

OR2011-00569

Dear Ms. Reingold:

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# 405582.

The Galveston County Sheriff's Office (the "sheriff") received a request for all records concerning a named former employee. You state you have released most of the requested information. You indicate you will withhold fingerprints and Texas driver's license numbers pursuant to the previous determination issued in Open Records Decision No. 684 (2009) and social security numbers under section 552.147 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, and 552.130 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. This section encompasses federal statutes such as the Driver's Privacy

¹Open Records Decision No. 684 is previous determination to all governmental bodies authorizing them to withhold ten categories of information, including fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, and Texas driver's license numbers and a copy of a Texas driver's license under section 552.130 of the Government Code, 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.

Protection Act of 1994 (the "DPPA"), 18 U.S.C. § 2721-2725. The DPPA restricts the disclosure of "personal information" or "highly restricted personal information" obtained by a state department of motor vehicles in connection with a motor vehicle record, with exceptions for certain permissible uses.² 18 U.S.C. § 2721(a)(1)-(2); Attorney General Opinion GA-0789 (2010). "[P]ersonal information" is "information that identifies an individual, including an individual's . . . driver's identification number." *Id.* § 2725(3). "[H]ighly restricted personal information" is "an individual's photograph or image, social security number, [and] medical or disability information." *Id.* § 2725(4). A state department of motor vehicles, such as the Texas Department of Public Safety, may disclose personal information and highly restricted personal information "[f]or use by any government agency, including any court or law enforcement agency, in carrying out its functions[.]" *Id.* § 2721(b)(1). Further, "[a]n authorized recipient of personal information . . . may resell or redisclose the information only for a use permitted under subsection (b)[.]" *Id.* § 2721(c). You assert a portion of the submitted information is confidential under the DPPA. However, in this instance, you do not explain how the information at issue is subject to section 2721(a) of the DPPA. Furthermore, you have not established the sheriff is an authorized recipient of personal information for purposes of section 2721(b) that is subject to the limitation on redisclosure of personal information under subsection (c) of the DPPA. We therefore conclude the DPPA is inapplicable to the information at issue, and the sheriff may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses chapter 411 of the Government Code, which deems confidential criminal history record information ("CHRI") generated by the National Crime Information Center or the Texas Crime Information Center. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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 DPS maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. We note an individual's current involvement in the criminal justice system, including active warrant information, does not constitute criminal history record information. In addition, information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). Upon review, we agree a portion of the information, which we have marked, constitutes CHRI generated by the National Crime Information Center or the Texas Crime Information Center. Accordingly, the sheriff must withhold this information under section 552.101 in conjunction with section 411.083 of the Government

²The DPPA defines "motor vehicle record" as "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles." 18 U.S.C.A. § 2725(1).

Code and federal law. However, none of the remaining information is confidential under section 411.083, and the department may not withhold it on this basis.

Section 552.101 of the Government Code also encompasses section 611.002(a) of the Health and Safety Code, which governs the public availability of mental health records and provides in part the following:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). We agree the information you have marked consists of a mental health record the sheriff must withhold under section 552.101 in conjunction with section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045 of the Health and Safety Code.³

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. Section 159.002 of the MPA provides in pertinent part:

(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(b), (c). 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 the submitted drug test forms and results, which you have

³As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

marked, constitute medical records subject to the MPA. The sheriff may only release this information in accordance with the MPA.⁴ See Open Records Decision No. 598 (1991). However, you do not explain, nor can we discern, how any of the remaining information was completed as part of any diagnosis, evaluation, or treatment of an individual by a doctor or someone under the supervision of a doctor for purposes of section 159.002. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

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 ("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 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). You state you will withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms you have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code pursuant to Open Records Decision No. 684.⁵ You also claim some of the remaining information is confidential pursuant to section 1701.306. However, none

⁴As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

⁵Open Records Decision No. 684 also authorizes all governmental bodies to withhold L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code without the necessity of requesting an attorney general decision.

of the remaining information consists of L-2 or L-3 forms, and it may not be withheld under section 552.101 on that basis.

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

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under [the Act] 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. You have marked F-5 (“Report of Separation of Licensee”) reports. These reports do 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 reports you 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:

(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.

Id. § 1703.306(a). You have marked the information you claim is excepted under section 1703.306. You do not indicate the requestor falls into any of the categories of

individuals who are authorized to receive the polygraph information under section 1703.306(a). Upon review, we agree the information you have marked was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. Accordingly, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations 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). This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, 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 individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Upon review, we agree the information you have marked, and the additional information we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.⁶

We note the remaining information includes information excepted from disclosure under section 552.102(a) 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." Gov't Code § 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.

You raise section 552.117 of the Government Code for portions of the remaining information. Section 552.117(a)(2) excepts from public disclosure the home address, home

⁶As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

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.⁷ Gov't Code § 552.117(a)(2). We note section 552.117 also encompasses a personal cellular telephone number, provided the service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we agree the sheriff must withhold most of the information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code as the personal information of a peace officer.⁸ However, if any of the cellular telephone numbers marked under section 552.117(a)(1) are from a cellular telephone service paid for by the sheriff, then those telephone numbers must be released. Additionally, we note a portion of the information you have marked does not consist of the personal information of a peace officer. The sheriff therefore may not withhold this information, which we have marked for release, on that basis.

You raise section 552.130 of the Government Code for portions of the remaining information. Section 552.130 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 note this exception does not encompass out-of-state motor vehicle information. Consequently, the out-of-state motor vehicle record information you have marked, which we have marked for release, may not be withheld under section 552.130. The sheriff must withhold the remaining Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.⁹

In summary, the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff must withhold the mental health record you have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045 of the Health and Safety Code. The sheriff may only release the medical records you have marked in accordance with the MPA. The sheriff must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms you have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The sheriff must withhold the F-5 reports you have marked under section 552.101 of the Government Code in

⁷"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁸As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

⁹As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

conjunction with section 1701.454 of the Occupations Code. The sheriff must withhold the information acquired from a polygraph examination you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the information we have marked under section 552.102(a) of the Government Code. Except for the information marked for release and the cellular telephone numbers if the numbers are from a cellular telephone service paid for by the sheriff, the sheriff must withhold the information marked information under section 552.117(a)(2) of the Government Code. The sheriff must withhold the Texas motor vehicle record information marked under section 552.130 of the Government Code. The sheriff must release the remaining information.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 405582

Enc. Submitted documents

c: Requestor
(w/o enclosures)