



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2011

Mr. John Mark Cobern
Titus County Attorney
Titus County
100 West First Street
Mount Pleasant, Texas 75455

OR2011-02010

Dear Mr. Cobern:

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# 408652.

The Titus County Sheriff's Office (the "sheriff") received a request for the personnel files of two former employees. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, 552.134, 552.136, 552.137, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state the sheriff received the request for information on November 16, 2010. Accordingly, you were required to request a decision from this office by December 2, 2010. We note the sheriff's request for a ruling from this office was dated and sent to this office by facsimile on December 3, 2011. Consequently, we determine the sheriff failed to comply with the procedural requirements mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption

that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 586 (1991). This office has held a compelling reason exists to withhold information when third-party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). You assert sections 552.101, 552.1175, 552.130, 552.134, 552.136, 552.137, and 552.140 of the Government Code, which can provide compelling reasons to withhold information. Additionally, we note section 552.102 is applicable to a portion of the submitted information.¹ Accordingly, we will consider the applicability of these exceptions to 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 made confidential by other statutes, including section 1324a of title 8 of the United States Code, which provides an Employment Eligibility Verification Form I-9 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). The submitted information includes two federal I-9 forms and their attachments. Release of these forms and the attachments in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 forms and the attachments, which we have marked, are confidential pursuant to section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See 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

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).

only release CHRI to another criminal justice agency for a criminal justice purpose. *See 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. 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 section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). We also note 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 conclude that 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. However, the remaining information you have marked does not constitute CHRI for purposes of section 411.083 and may not be withheld under section 552.101 on that basis.

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 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 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which provides the following:

(a) [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 [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Upon review, we find the sheriff must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we have marked under section 552.101 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 section, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the [TCLEOSE] employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the [TCLEOSE] that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Id. § 1701.454. The submitted information includes F-5 Report of Separation of License Holder forms. In this instance, the named employees did not resign due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff must withhold the F-5 forms 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 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 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. Whether information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. See Open Records Decision No. 373 (1983). This office has found that 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 (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 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, are protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

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.

We note that section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this

information be kept confidential under section 552.024 of the Government Code. 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 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. The submitted information indicates that both employees at issue timely elected confidentiality of their personal information. Thus, the sheriff must withhold these employees' personal information, which we have marked, under section 552.117(a)(1).²

You raise section 552.1175 of the Government Code for portions of the remaining information. Section 552.1175 provides in part:

(a) This section applies only to:

...

(2) county jailers as defined by Section 1701.001, Occupations Code;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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(a)(2), (b)(1)-(2). However, none of the remaining information consists of a home address, home telephone number, social security number, or family member information for the purposes of section 552.1175, and none of the remaining information may be withheld on that basis.

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.

²As our ruling is dispositive, we need not address your argument against disclosure of this information.

Gov't Code § 552.130(a)(1). Therefore, the sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.134 provides, in part, as follows:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Section 552.134 is applicable only to information that relates to an inmate of the Texas Department of Criminal Justice. You seek to withhold the identities of inmates of the Titus County Jail under section 552.134. However, you do not explain, and it is not otherwise clear, how or why section 552.134 would be applicable to the information you have marked. Therefore, we conclude the sheriff may not withhold any of the information at issue under section 552.134 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; *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. You inform us that the long distance code you have marked is used by employees to dial long-distance while on duty. We conclude the long-distance code is an “access device” number for purposes of section 552.136 of the Government Code. Accordingly, the sheriff must withhold the insurance policy number and the long distance code we have marked under section 552.136 of the Government Code. However, you have not explained how the remaining numbers you seek to withhold under section 552.136 constitute access device numbers used to obtain money, goods, services, or another thing of value or used to initiate a transfer of funds other than a transfer originated solely by a paper instrument. Accordingly, the sheriff may not withhold any of the remaining information on that basis.

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). *Id.* § 552.137(a)-(c). The e-mail addresses we have marked are not specifically excluded by section 552.137(c). Therefore, the e-mail addresses we have marked must be withheld under section 552.137 unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

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 only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). You state the submitted military discharge form came into the sheriff's possession after September 1, 2003. Thus, the sheriff must withhold this form, which we have marked, under section 552.140 of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the sheriff must withhold the following under section 552.101 of the Government Code (1) the I-9 forms and attachments we have marked in conjunction with section 1342a of title 8 of the United States Code and may only be released in compliance with federal laws and regulations governing the employment verification system; (2) the CHRI we have marked in conjunction with chapter 411 of the Government Code; (3) the fingerprints we have marked in conjunction with section 560.003 of the Government Code; (4) the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we have marked in conjunction with section 1701.306 of the Occupations Code; (5) the F-5 forms we have marked in conjunction with section 1701.454 of the Occupations Code; and (6) 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 must withhold the former employees' personal information we have marked under section 552.117(a)(1) of the Government Code. The sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code and the insurance policy numbers and the long distance code we have marked under section 552.136 of the Government Code. The sheriff must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release. The sheriff must withhold the military discharge form we have marked

under section 552.140 of the Government Code.³ The remaining information must be released, but any copyrighted information may only be released in accordance with copyright laws.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 408652

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We 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 without the necessity of requesting an attorney general decision, including the following: I-9 forms and attachments under section 1342a of title 8 of the United States Code; a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code; Texas license driver's license numbers under section 552.130 of the Government Code; insurance policy numbers under section 552.136 of the Government Code; e-mail addresses of members of the public under section 552.137 of the Government Code; and a military discharge record that is first recorded or first comes into the possession of a governmental body on or after September 1, 2003 under section 552.140 of the Government Code.