



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2011

Ms. Katherine Hudson
Wise County Treasurer
P.O. Box 12548
Austin, Texas 78711-2548

OR2011-03176

Dear Ms. Hudson:

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# 410640.

Wise County (the "county") received a request for information related to a named former county deputy. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes documents filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(17). We marked the documents that are subject to section 552.022(a)(17). Although we understand you to raise section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed documents, information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). However, we will address your arguments under sections 552.102 and 552.117 because these sections are "other law" for purposes of section 552.022(a)(17). We also will consider your arguments for the information that is not subject to section 552.022(a)(17).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses section 1701.454 of the Occupations Code, which governs the public availability of an F-5 form (“Report of Separation of Licensee”) submitted to the Texas Commission on Law Enforcement Officers Standards and Education (“TCLEOSE”) under subchapter J of chapter 1701 of the Occupations Code. 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.

Occ. Code § 1701.454. The submitted information contains F-5 “Report of Separation of License Holder” reports, which does not indicate the deputy whose information is at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the county 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 of the Government Code also encompasses section 550.065 of the Transportation Code. The submitted information contains ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states 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) date of the accident; (2) name of any person involved in the accident; and (3) 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 pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the county with at least two of the three items of information specified by section 550.065(c)(4). Therefore, the county must withhold the submitted ST-3 accident report forms, which we have marked, under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession

of a governmental body is exempt from disclosure under [the Act].” 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 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). Upon review, we have marked fingerprints in the remaining information. You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the county must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses section 411.192 of the Government Code. Section 411.192 governs the release of all information maintained by the Department of Public Safety (“DPS”) concerning the licensure of individuals to carry concealed handguns, and provides:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual’s name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a), (b). We have marked a portion of the remaining information regarding a concealed handgun license that appears to have been received by the county from DPS. In this instance, the requestor is not a criminal justice agency, nor is the requestor the license holder whose information is at issue. Further, we note section 411.193 is not applicable in this instance. *See id.* § 411.193 (making a statistical report including the number of licenses issued, denied, revoked, or suspended by DPS during the preceding month available to the public). Therefore, the county must withhold the information we have marked pursuant to section 552.101 in conjunction with section 411.192 of the Government Code.

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 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. *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 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 the county 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.

You claim the remaining 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." 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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). 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, 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 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found 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).

However, we note that 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. Therefore, the county must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and the county may not withhold it under section 552.101 on the basis of common-law privacy.

Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 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. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). But 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* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). It is unclear whether the individuals whose personal information is at issue are currently licensed peace officers, as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individuals at issue are licensed peace officers, then the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the marked cellular telephone number may only be withheld under section 552.117(a)(2) of the Government Code if service is paid for by the former deputy.

If the individuals at issue are not licensed peace officers, then the personal information at issue may be subject to section 552.117(a)(1) of the Government Code. 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. *See* Gov’t Code §§ 552.117, .024. 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. We note you have provided documentation showing the named former deputy at issue timely elected confidentiality under section 552.024. Accordingly, the county must withhold his personal information we have marked under section 552.117(a)(1) of the Government Code. However, the marked cellular telephone number may only be withheld under section 552.117(a)(1) of the Government Code if service is paid for by the former deputy. To the extent the other individual at issue timely requested confidentiality under section 552.024, the county must withhold his information we have marked under section 552.117(a)(1). Conversely, to the extent this individual did not make a timely election under section 552.024, the county may not withhold the marked information under section 552.117(a)(1) of the Government Code.

We note the remaining information in this instance contains information that may be subject to sections 552.130, 552.136, and 552.137 of the Government Code.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license issued by a Texas agency. Gov’t Code § 552.130(a)(1).

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Therefore, the county must withhold the Texas motor vehicle record information we have marked under section 552.130.

Section 552.136(b) states that “[n]otwithstanding any other provision of [the Act], 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); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of section 552.136. The county must withhold the insurance policy 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). The e-mail addresses at issue do not appear to be of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the county must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.

In summary, the county must withhold the following information under section 552.101 of the Government Code: 1) the F-5 forms we have marked in conjunction with section 1701.454 of the Occupations Code, 2) the ST-3 accident report forms we have marked in conjunction with section 550.065(b) of the Transportation Code, 3) the fingerprint information we have marked in conjunction with section 560.003 of the Government Code, 4) the concealed handgun license information we have marked in conjunction with section 411.192 of the Government Code, 5) the CHRI we have marked in conjunction with section 411.083 of the Government Code, and 6) the information we have marked in conjunction with common-law privacy. The information we have marked must be withheld under section 552.102(a) of the Government Code. To the extent the individuals at issue are licensed peace officers, the county must withhold the marked information under section 552.117(a)(2) of the Government Code. If the individuals at issue are not licensed peace officers, then to the extent the individuals at issue timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the marked information under section 552.117(a)(1) of the Government Code. The county must withhold the personal information pertaining to the named former deputy we have marked under section 552.117(a)(1) of the Government Code. However, the marked cellular telephone number may only be withheld under section 552.117 of the Government Code if service is paid for by the former deputy. The county must withhold the Texas motor vehicle record information we have marked under section 552.130. The county must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The county must withhold the e-mail addresses we have marked under section 552.137 of

the Government Code, unless the owners affirmatively consents to their disclosure.² 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, 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,


Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 410640

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We 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 direct deposit authorization form under section 552.101 in conjunction with common-law privacy; 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 and a copy of a Texas driver's license under section 552.130 of the Government Code; an insurance policy number under section 552.136 of the Government Code; and e-mail addresses of members of the public 552.137 of the Government Code, without the necessity of requesting an attorney general decision.