



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 29, 2011

Mr. James D. Parker  
Knight & Partners  
For City of Leander  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2011-05862

Dear Mr. Parker:

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# 415865.

The Leander Police Department (the "department"), which you represent, received a request for the personnel file of a former officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.115, 552.117, 552.119, 552.137, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note that the department has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See Gov't Code*

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note the correct exception to raise for information pertaining to an officer employed by the department is section 552.117.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

§§ 552.301(a), .301(e)(1)(D). The department has redacted, in part, Texas driver's license numbers and personal e-mail addresses. Redacting of Texas driver's license numbers and personal e-mail addresses is now permitted pursuant to the previous determination issued to all governmental bodies in Open Records Decision 684 (2009).<sup>3</sup> Additionally, you have redacted some information pursuant to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>4</sup> However, you do not assert, nor does our review of our records indicate, that the department is authorized to withhold any of the remaining redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the department should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as 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

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<sup>3</sup>Open Records Decision No. 684 serves as a 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; L-2 and L03 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; Texas driver's license numbers under section 552.130 of the Government Code; insurance policy numbers under section 552.136 of the Government Code; and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. without the necessity of requesting an attorney general decision. *See* ORD 684.

<sup>4</sup>Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See Gov't Code* §§ 552.117, .024(c).

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). The submitted information contains a consumer report subject to the FCRA. Accordingly, the department must withhold this consumer report, which we have marked, under section 552.101 of the Government Code in conjunction with the FCRA.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part the following:

(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.* 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). We find the information we have marked constitutes confidential medical records that may only be released in accordance with the MPA. However, we find none of the remaining information constitutes a medical record for purposes of the MPA. Accordingly, the department may not withhold any of the remaining information under section 552.101 on that ground.

Section 552.101 of the Government Code 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. *See* 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.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in 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 not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). However, 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). Upon review, we find portions of the remaining information, which we marked, consist of CHRI that is confidential under chapter 411. Accordingly, the department must withhold the information we marked under section 552.101 in conjunction with chapter 411 and federal law. However, none of the remaining information consists of CHRI for the purposes of chapter 411 of the Government Code. Accordingly, the department may not withhold any of the remaining information on that basis.

Section 552.101 encompasses chapter 560 of the Government Code, which governs the public availability of fingerprints. Section 560.003 of the Government Code provides “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* §§ 560.003; .001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .002 (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Thus, the department must withhold the fingerprints we marked under section 552.101 in conjunction with section 560.003 of the Government Code.

A portion of the remaining information is subject to section 1701.306 of the Occupations Code. Section 552.101 also encompasses section 1701.306, which pertains to an L-2 Declaration of Medical Condition and an L-3 Declaration of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). Section 1701.306 provides as follows:

- (a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and 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). Upon review, we find the department must withhold the submitted L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

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

*Id.* § 1701.454. The remaining submitted information contains an F-5 "Report of Separation of License Holder" report, which does not indicate the former 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 department must withhold the submitted F-5 form 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 common-law right of privacy, which 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). The types of information considered intimate and 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. *See id.* at 683. 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). However, there is a legitimate public interest in an applicant's background and qualifications for government employment, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). This office has also found that information pertaining to certain personal financial decisions is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). Upon review, we agree portions of the remaining submitted information are highly intimate or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how any of the remaining information at issue is highly intimate or embarrassing or not of legitimate public interest. Accordingly, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

You claim the remaining 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." 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.

You assert some of the remaining information is excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the

employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Upon review, we find none of the submitted information consists of a transcript of professional public school employee. Thus, the department may not withhold any of the submitted information under section 552.102(b) of the Government Code.

You raise section 552.115 of the Government Code, which excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). We note none of the submitted information consists of a birth or death record maintained by the bureau of vital statistics or a local registration official. Accordingly, section 552.115 of the Government Code is not applicable to any of the information at issue, and none of the remaining information may be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note section 552.117(a)(2) encompasses a peace officer's personal cellular telephone and pager numbers if the officer personally pays for the cellular or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1998) (Gov't Code § 552.117 not applicable to cellular mobile telephone numbers paid for by governmental body and intended for official use). In this instance, the requested information concerns an officer who is no longer employed by the department. However, you inform us the former officer is still a peace officer as defined by article 2.12. Accordingly, the department must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.<sup>5</sup>

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." Gov't Code

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information except to note that regardless of the applicability of section 552.117, 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.

§ 552.130(a). The department must, therefore, withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.<sup>6</sup>

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”). The submitted information contains insurance policy numbers that are subject to section 552.136. The department must withhold these marked numbers 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). We note that this exception is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked the private e-mail addresses in the remaining information. The department must withhold these e-mail addresses under section 552.137 of the Government Code, unless their owners have affirmatively consented to their release.

In summary, the department must withhold the consumer report which we have marked under section 552.101 of the Government Code in conjunction with the FCRA. The submitted medical records may only be released in accordance with the MPA. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 and federal law, as well as the fingerprints we marked under section 552.101 in conjunction with section 560.003 of the Government Code. The department must withhold the submitted L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, as well as the submitted F-5 form pursuant to section 552.101 in conjunction with section 1701.454 of the Occupations Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the information we have marked under section 552.102(a) of the Government Code. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code. The department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code,

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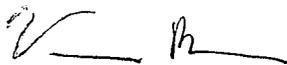
<sup>6</sup>As our ruling is dispositive, we need not address your section 552.119 argument against disclosure of this information.

unless the owners of the addresses have affirmatively consented to their release. The remaining information must be released.<sup>7</sup>

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](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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 415865

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>7</sup>Open Records Decision No. 684 serves as a 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; L-2 and L03 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; Texas driver's license numbers under section 552.130 of the Government Code; insurance policy numbers under section 552.136 of the Government Code; and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision, without the necessity of requesting an attorney general decision. See ORD 684.