



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2011

Ms. Dori Wind
Special Counsel
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2011-07041

Dear Ms. Wind:

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# 419633 (C.A. File NO. 11LNF00006).

The Harris County Sheriff's Office (the "sheriff") received a request for information pertaining to a named employee. You state the sheriff does not have some of the requested information.¹ You also state the sheriff produced some of the requested information to the requestor, but claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including federal law, such as the federal Fair Credit Reporting Act (the "FCRA"), section 1681 through 1681x of title 15 of the United States Code. Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person that the

¹The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

consumer reporting agency has reason to believe intends to use the information for employment purposes. *See* 15 U.S.C. § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining “person” and “consumer report”). Section 1681b further provides that “[a] person shall not use or obtain a consumer report for any purpose unless the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section . . . and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.” *Id.* § 1681b(f)(1)-(2). Section 1681e provides for the maintenance of compliance 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) (federal law strictly limits distribution of consumer credit reports by credit reporting agencies). Upon review, we find the submitted information does not contain a consumer report subject to the FCRA. Accordingly, none of the submitted information is confidential under the FCRA, and the sheriff may not withhold any of the information under section 552.101 on that basis.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Employee W-4 forms are excepted from disclosure by section 6103(a). Open Records Decision No. 600 (1992). Accordingly, the sheriff must withhold the submitted W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a).

Section 552.101 also encompasses section 1324a of title 8 of the United States Code. Section 1324a provides that 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. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of the submitted Form I-9 under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the sheriff must withhold the submitted Form I-9 and its attachments, which we have marked, under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* 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 subchapter F of chapter 411 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.* §§ 411.090-411.127. Similarly, 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 driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082 (2)(B) (definition of CHRI does not include driving record information). Additionally, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *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 have marked the portion of the submitted information that is confidential pursuant to chapter 411. Therefore, the sheriff must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. You have not explained, however, how the remaining information at issue constitutes confidential CHRI for purposes of chapter 411. Accordingly, the sheriff may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(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.

Occ. Code § 159.002(b), (c). Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, 159.005. Upon review, we find you have not established any of the submitted information constitutes medical records. Accordingly, none of the submitted information is confidential under the MPA, and the sheriff may not withhold any of the information under section 552.101 on that basis.

Section 552.101 also encompasses section 560.003 of the Government Code, which provides “[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), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). We have marked the 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 fingerprints in this case. Therefore, the sheriff must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual’s mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). We further note the scope of a public employee's privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). The submitted documents contain personal financial information, and the public does not have a legitimate interest in it. *See* Open Records Decision Nos. 620 (1993), 600. Thus, the sheriff must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, however, we find you have not established the remaining information is highly intimate or embarrassing. Therefore, the remaining information is not confidential under common-law privacy, and the sheriff may not withhold it under section 552.101 on that ground.

You claim some of 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 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code §§ 552.024, 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state, and provide supporting documentation showing, the named employee elected to keep these types of information confidential before the sheriff received the request for information. Therefore, the sheriff must withhold the information pertaining to the named employee that we have marked under section 552.117(a)(1).² The remaining information appears to contain the social security numbers of other sheriff employees. Accordingly, the sheriff must also withhold these social security numbers, which we have marked, under section 552.117(a)(1) if they pertain to current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. To the extent these social security numbers are not excepted from disclosure under section 552.117, we address your arguments to withhold this information under section 552.147 of the Government Code.

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov't Code § 552.147(a). Accordingly, the sheriff may withhold the social security numbers in the remaining information under section 552.147.³

Some of the remaining information is excepted from disclosure under section 552.130 of the Government Code.⁴ 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. *Id.* § 552.130(a)(1), (2). The sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130.

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

³We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136(b) provides 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(b). Upon review, however, we find the sheriff has not established the remaining information contains a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body; therefore, the sheriff may not withhold any of the remaining information under section 552.136.

You assert some of the remaining information is excepted under section 552.137 of the Government Code. Section 552.137 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 remaining information does not contain an e-mail address. Therefore, the sheriff may not withhold any of the remaining information under section 552.137.

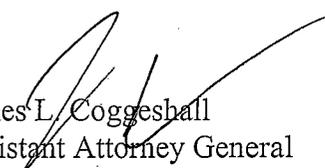
We conclude the following: (1) the sheriff must withhold the submitted W-4 tax form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (2) the sheriff must withhold the Form I-9 and attachments we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (3) the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code, section 560.003 of the Government Code, and common-law privacy; (4) the sheriff must withhold the information we have marked under section 552.102(a) of the Government Code; (5) the sheriff must withhold the information pertaining to the named employee we have marked under section 552.117(a)(1) of the Government Code; (6) the sheriff must withhold the remaining social security numbers we have marked under section 552.117(a)(1) if they pertain to current or former sheriff employees who timely elected to withhold that information under section 552.024; however, the sheriff may withhold this information under section 552.147 of the Government Code regardless of the applicability of section 552.117(a)(1); (7) the sheriff must withhold the information we have marked under section 552.130 of the Government Code; and (8) the sheriff must release the remaining information.⁵

⁵We 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 Form I-9 and attachments under section 552.101 in conjunction with section 1324a of title 8 of the United States Code, a W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code, a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code, a direct deposit authorization form under section 552.101 in conjunction with the common-law right to privacy, and a Texas driver’s license number under section 552.130, without the necessity of requesting an attorney general opinion.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 419633

Enc. Submitted documents

c: Requestor
(w/o enclosures)