



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2011

Ms. Amy Currier
Public Information Officer
Texas Funeral Service Commission
P.O. Box 12217
Austin, Texas 78711

OR2011-12896

Dear Ms. Currier:

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# 429036.

The Texas Funeral Services Commission (the "commission") received a request for licensing information pertaining to seventeen named individuals. You state the commission will provide most of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Although you generally assert the submitted information should be withheld under common-law privacy, you have failed to provide any

arguments explaining how this information is confidential under common-law privacy. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Furthermore, we note the individual whose information is at issue provided the submitted information to the commission as part of his license application. Consequently, in this instance, upon review of the submitted information and your arguments, we find the information is not confidential under section 552.101 of the Government Code in conjunction with common-law privacy, and the commission may not withhold it on that basis.

We note the submitted information contains a DD-214 form. Section 552.140 of the Government Code provides 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.¹ *See id.* § 552.140(a), (b). We have marked the DD-214 form at issue. You do not inform us when the commission came into possession of this form. Therefore, if the commission came into possession of the form on or after September 1, 2003, the commission must withhold the marked DD-214 form under section 552.140 of the Government Code.² If the form was received by the commission before September 1, 2003, then the commission may not withhold the form pursuant to section 552.140 of the Government Code. The remaining information must be released.³

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

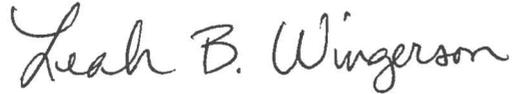
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 DD-214 forms under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information contains a social security number. 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. Gov't Code § 552.147(b).

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 429036

Enc. Submitted documents

c: Requestor
(w/o enclosures)