



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2011

Mr. Brandon S. Davis  
Fielder & Gunter  
310 Main Street  
Liberty, Texas 77575

OR2011-17012

Dear Mr. Davis:

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# 437541.

The Liberty Police Department (the "department"), which you represent, received a request for a named officer's civil service file.<sup>1</sup> You state the department has released some of the requested information. You also state the department is withholding social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act). You claim some of the submitted information is excepted from disclosure under sections 552.102, 552.117, 552.130, and 552.136 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>You do not inform us the City of Liberty is a civil service city as defined under chapter 143 of the Local Government Code. *See* Loc. Gov't Code § 143.089.

<sup>2</sup>Based on your arguments, we understand you to raise section 552.102 of the Government Code.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> Gov’t Code § 552.101. This section encompasses information protected by other statutes, including 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. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Access to records created or maintained by a physician subject to the MPA is governed by the provisions of that statute, rather than by the Public Information Act. *Id.* We have marked the portion of the submitted information that constitutes medical records and that the department may only release in accordance with the MPA.

Section 552.101 of the Government Code also encompasses federal law. The submitted information contains an Employment Eligibility Verification, Form I-9, and its attachments. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the 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 this document under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the department must withhold the submitted Form I-9 and its attachments,

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<sup>3</sup>The 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).

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 of the Government Code 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). 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) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history) (1990), 373 (1983) (common-law privacy protects assets and income source information). 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). 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. We have marked the information that the department must withhold under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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). We agree the department must withhold the dates of birth you have marked under section 552.102(a) of the Government Code.

You assert some of the remaining information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Section 552.117(a)(2) excepts from disclosure this same information regarding a peace officer, as defined by

article 2.12 of the Texas Code of Criminal Procedure, regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential. *Id.*

Some of the information you seek to withhold under section 552.117 does not consist of a home address or telephone number, emergency contact information, social security number, or family member information. Thus, the department may not withhold this information, which we have marked for release, under section 552.117. However, we find section 552.117 is applicable to the remaining information you have marked, as well as the information we have marked, under that section. Thus, if the former department officer at issue is currently a licensed peace officer as defined by article 2.12 of the Texas Code of Criminal Procedure, then the department must withhold this information under section 552.117(a)(2). If this individual is not currently a licensed peace officer as defined by article 2.12, then the department must withhold this information under section 552.117(a)(1) if the individual requested that this information be kept confidential under section 552.024 of the Government Code before the city received the request for information. If, however, this individual neither is currently a licensed peace officer as defined by article 2.12 nor timely requested confidentiality under section 552.024, then the department may not withhold this information under section 552.117(a)(1) or (2).

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). We conclude the department must withhold the motor vehicle record information we have marked under section 552.130. However, the remaining information does not consist of motor vehicle record information that is excepted from disclosure under section 552.130.

Section 552.136 of the Government Code provides the following:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Gov’t Code § 552.136. This office has determined an insurance policy number is an access device for purposes of section 552.136. Thus, the department must withhold the insurance policy numbers you have marked under section 552.136.

The remaining information contains the e-mail address of a member of the public. 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). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c), and you do not inform us a member of the public has affirmatively consented to its release. Therefore, the department must withhold the e-mail address you have marked under section 552.137.

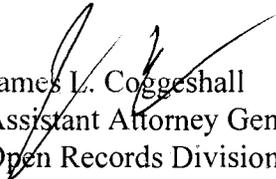
We conclude the following: (1) the department may only release the medical records we have marked in accordance with the MPA; (2) the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and common-law privacy; (3) the department must withhold the dates of birth you have marked under section 552.102(a) of the Government Code; (4) with the exception of the information we have marked for release, the department must withhold the remaining information marked under section 552.117(a)(2) of the Government Code if the former department officer at issue is currently a licensed peace officer as defined by article 2.12 of the Texas Code of Criminal Procedure; however, if this individual is not currently a licensed peace officers as defined by article 2.12, then the department must withhold this information under section 552.117(a)(1) if the individual requested that this information be kept confidential under section 552.024 of the Government

Code before the city received the request for information; (5) the department must withhold the remaining information we have marked under section 552.130 of the Government Code; (6) the department must withhold the remaining information marked under sections 552.136 and 552.137 of the Government Code; and (7) the department must release the remaining information.<sup>4</sup> As our ruling is dispositive, we do not address your other arguments to withhold the information at issue.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 437541

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We 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 the common-law right to privacy, a Form I-9 and attachments under section 552.101 in conjunction with section 1324a of title 8 of the United States Code and an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general opinion.