



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2012

Ms. Erin A. Higginbotham  
Denton, Navarro, Rocha & Bernal  
2500 West William Cannon Suite 609  
Austin, Texas 78745

OR2012-08586

Dear Ms. Higginbotham:

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# 455860.

The Copperas Cove Police Department (the "department"), which you represent, received a request for 18 categories of information regarding four named police officers.<sup>1</sup> You state some of the requested information either has been or will be released. You inform us other responsive information will be redacted pursuant to the previous determination issued in Open Records Decision No. 684 (2009) and sections 552.130, 552.136, 552.137, 552.140,

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<sup>1</sup>You state, and have provided documentation confirming, the department requested and received clarification of the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

and 552.147 of the Government Code.<sup>2</sup> You claim other responsive information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.<sup>3</sup>

You also contend some of the submitted information, which you have marked, is not responsive to the present request for information, either because the requestor does not seek access to the marked information or because the information “does not concern [the] officer” to whom the submitted representative sample of information generally pertains.<sup>4</sup> On review, we agree the information we have marked is not responsive to the present request and need not be released to the requestor. Although you have marked other types of information as being not responsive, we find the remaining information in question either is not among the types of information the requestor has excluded from his request or clearly concerns the officer involved, inasmuch as the information bears her name. We therefore conclude the remaining types of information you have marked are responsive to the request and must be released unless they fall within the scope of an exception to disclosure.

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<sup>2</sup>Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, an L-3 declaration under section 552.101 in conjunction with section 1701.306 of the Occupations Code, a Texas license plate number under section 552.130 of the Government Code, an e-mail address of a member of the public under section 552.137 of the Government Code, and a Form DD-214 or other military discharge record under section 552.140 of the Government Code. Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the driver’s license and personal identification information described in subsections 552.130(a)(1) and (a)(3). *See* Gov’t Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body’s decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide notice to requestor). Section 552.136(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision, access device numbers subject to section 552.136(b). *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body’s decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor). 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. *See id.* § 552.147(b).

<sup>3</sup>This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>4</sup>The requestor states he “do[es] not seek and . . . consent[s] to the redaction of home address, phone, social security number, date of birth, driver’s license number, license plate information, and any other personal identifying information that is excluded by statute.” Thus, we understand the requestor does not seek access to the types of information encompassed by sections 552.102(a), 552.117, and 552.130 of the Government Code. *See* Gov’t Code §§ 552.102(a), .117, .130. The requestor also “consent[s] that such information that is confidential pursuant to the doctrine of common law privacy may be redacted.” *See id.* § 552.101; *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

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 exception encompasses information other statutes make confidential, including 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 id.* § 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). 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 federal law strictly limits distribution of consumer credit reports by credit reporting agencies). We conclude the department must withhold the consumer report we have marked under section 552.101 of the Government Code in conjunction with the FCRA.

Section 552.101 of the Government Code also encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See 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 of the items of information specified by the statute. *Id.* The submitted information includes crash reports that were completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer’s accident report). In this instance, the requestor has not provided the department with two of the three specified items of information. Therefore, the department must withhold the crash reports we have marked pursuant to section 550.065(b) of the Transportation Code.

Medical records are confidential under the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

- (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.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked medical records that must be withheld under section 159.002 of the MPA, unless the department receives the required written consent for release under sections 159.004 and 159.005 of the MPA. Although you seek to withhold additional information on this basis, you have not demonstrated the remaining information in question constitutes either a communication between a patient and a physician or a record created or maintained by or for a physician. *See* Occ. Code § 159.002(a)-(b). We therefore conclude the department may not withhold any of the remaining responsive information on the basis of the MPA.

Criminal history record information ("CHRI") obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center is confidential under section 552.101 of the Government Code in conjunction with federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). We note the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the "DPS") under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2). We also note a criminal justice agency may disclose to the public CHRI "that is related to the offense for which a person is involved in the criminal justice system." *Id.* § 411.081(b). Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record

information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI it generates. *See* ORD 565 at 10-12; *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We conclude the department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

You also claim section 552.102 of the Government Code, which excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the privacy test under section 552.101 of the Government Code in conjunction with *Industrial Foundation v. Texas Industrial Accident Board*. *See* 540 S.W.2d 668, 685 (Tex. 1976). The Texas Supreme Court expressly disagreed with *Hubert’s* interpretation of section 552.102(a), however, and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Supreme Court then considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Thus, because the requestor does not seek access to the birth date of the officer to whom the submitted information pertains, the department may not withhold any of the remaining responsive information on the basis of section 552.102(a) of the Government Code. We will determine, however, whether any of the remaining information at issue is confidential under section 552.101 of the Government Code in conjunction with common-law privacy.

Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found.*, 540 S.W.2d at 685. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have concluded public employees may have a privacy interest in their drug test results. *See* Open Records Decision Nos. 594 (1991) (suggesting identification of individual as having tested positive for use of illegal drug may raise privacy issues), 455 at 5 (1987) (*citing Shoemaker v. Handel*, 619 F. Supp. 1089 (D.N.J. 1985), *aff’d*, 795

F.2d. 1136 (3rd Cir. 1986)). Additionally, we have concluded a compilation of a private citizen's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). We note criminal history information obtained by a law enforcement agency in the process of hiring a peace officer is a matter of legitimate public interest and thus is not protected by common-law privacy under section 552.101. We also note information related to routine traffic violations does not implicate privacy concerns. *Cf. Gov't Code* § 411.081(b).

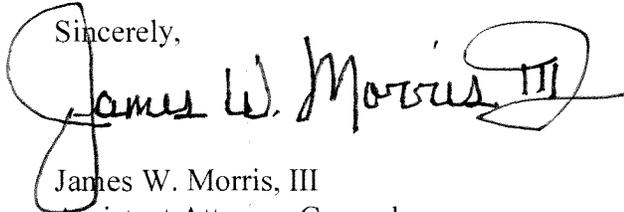
In this instance, the information at issue pertains to a police officer employed by the department. As this office has stated many times in many contexts, the public generally has a legitimate interest in public employment and public employees, particularly those involved in law enforcement. *See* Open Records Decision No. 444 at 6 (1986) (public has genuine interest in information concerning law enforcement employee's qualifications and performance and circumstances of his termination or resignation); *see also* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs). Although you contend the release of some of the remaining information would constitute an invasion of privacy, we find the information at issue is not highly intimate or embarrassing and a matter of no legitimate public interest. We therefore conclude the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with the FCRA; (2) the crash reports we have marked pursuant to section 550.065(b) of the Transportation Code; (3) the medical records we have marked under section 159.002 of the MPA, unless the department receives the required written consent for release under sections 159.004 and 159.005 of the MPA; and (4) the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The department must release the rest of the responsive information.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a distinct "III" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bs

Ref: ID# 455860

Enc: Submitted information

c: Requestor  
(w/o enclosures)