



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2012

Ms. Susan Camp-Lee
For City of Round Rock
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664

OR2012-18437

Dear Ms. Camp-Lee:

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# 471576.

The City of Round Rock (the "city"), which you represent, received a request for information pertaining to a named peace officer, specified procedures of the city's police department, the audio and video recordings of a specified traffic stop involving the named peace officer and the requestor, and the Police Agreement approved by the city. You state you have released some 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.¹ We have also considered comments received from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their

¹We note you have not submitted a copy of the requested I-9 form. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the city in the future to submit for review the information that it seeks to protect from disclosure and for which it seeks a ruling from this office. *See* Gov't Code §§ 552.301, .302.

related documents. This section provides an I-9 form 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. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the requested I-9 form in this instance would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude the requested I-9 form is confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Chamberlain v. Kurtz*, 589 F.2d 827, 840-41 (5th Cir. 1979); *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the city must withhold the W-2 form we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.²

We note the submitted information includes information subject to section 611.002 of the Health and Safety Code. Section 552.101 of the Government Code also encompasses section 611.002, which governs the public availability of mental health records and provides:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). Upon review, we find the information we have marked consists of mental health records. Accordingly, the city must withhold the mental health record we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045.³

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which provides:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education (“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 [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Upon review, we find the city must withhold the L-3 Declaration of Psychological and Emotional Health form we have marked under

³As our ruling is dispositive, we need not address your arguments against disclosure for this information.

section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.⁴

In summary, the city must withhold the requested I-9 form under section 552.101 in conjunction with section 1324a of title 8 of the United States Code and the W-2 form we have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the mental health record we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045. The city must withhold the L-3 Declaration of Psychological and Emotional Health form we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.⁵

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an I-9 form under section 552.101 in conjunction with section 1324 a of title 8 of the United States Code, W-2 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision.

Ref: ID# 471576

Enc. Submitted documents

c: Requestor
(w/o enclosures)