



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2014

Mr. Wesley N. Hinch
Liberty County Attorney
P.O. Box 9127
Liberty, Texas 77575

OR2014-12303

Dear Mr. Hinch:

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 # 531201.

The Liberty County Sheriff's Office (the "sheriff's office") received a request for the complete employment file of a named employee including his employment application, his background check results, the name of the person who conducted the background check, and the employee's photograph. You state the sheriff's office is releasing portions of the requested information to the requestor with redactions of some information in accordance with section 552.1175 of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101, 552.115, 552.1175, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential by statutory law. Title 28, part 20 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 (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 that the Department of

Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F 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 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990).* Furthermore, 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. Portions of the submitted information, which we have marked, consists of CHRI generated by TCIC and NCIC. Accordingly, this information is confidential under section 411.083 and therefore excepted from required public disclosure by section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987).* This office has also found an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common law privacy as encompassed by section 552.101 of the Government Code. *See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983).* For example, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction is not information that is excepted from disclosure. *Open Records Decision No. 600 at 9 (1992).* On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. *Id.* at 10-11.

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code 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.”¹ Gov’t Code § 552.102(a). The Texas Supreme Court 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.*, 354 S.W.3d 336 (Tex. 2010). Thus, we find the sheriff’s office must withhold the public employee’s date of birth we marked under section 552.102(a) of the Government Code.

Section 552.115 provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that “a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official.” Gov’t Code § 552.115(a). Because section 552.115 only applies to a birth certificate maintained by the bureau of vital statistics or local registration official, the sheriff’s office may not withhold the birth certificate at issue pursuant to that provision. *See* Open Records Decision No. 338 (1982).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. You state the records pertain to an officer with the sheriff’s office. Thus, the sheriff’s office holds the information in the capacity of the officer’s employer. Consequently, section 552.1175 does not apply to the information at issue.

The submitted records include information that is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from required public disclosure the current and former home addresses and telephone numbers, emergency contact information, family member information, and social security number of a peace officer regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code. Gov’t Code § 552.117(a)(1). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We understand the individual whose information is at issue is a peace officer as defined by article 2.12. Accordingly, we have marked the information that is protected from disclosure under section 552.117(a)(2) of the Government Code.

Section 552.119 of the Government Code provides:

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.102 and 552.117 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

(1) the officer is under indictment or charged with an offense by information;

(2) the officer is a party in a civil service hearing or a case in arbitration; or

(3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer.² Furthermore, a photograph of a peace officer cannot be withheld under section 552.119 if (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a civil service hearing or a case in arbitration; (3) the photograph is introduced as evidence in a judicial proceeding; or (4) the officer gives written consent to the disclosure.

You state none of the exceptions to disclosure in section 552.119 applies in this case. You state the officer's work "sometimes includes undercover operations and interaction with members of gangs and/or drug cartels." You contend disclosure of the photograph could jeopardize the officer's safety. Based on these representations, we conclude the sheriff's office must withhold the photograph of the officer based on section 552.119 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

Government Code and under the common-law right to privacy. The sheriff's office must withhold the information we marked under sections 552.102, 552.117(a)(2), and 552.130 of the Government Code and withhold the officer's photograph under section 552.119 of the Government Code. The sheriff's office must release the remaining 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/dls

Ref: ID# 531201

Enc. Submitted documents

c: Requestor
(w/o enclosures)