



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1995

Ms. Leslie Poynter Dixon
Criminal District Attorney
Van Zandt County
202 N. Capitol
Canton, Texas 75103

OR95-703

Dear Ms. Dixon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33785.

The County Judge of Van Zandt County received a request for all applications for the position of Sheriff of Van Zandt County that were received in the two months prior to the date of the request. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.117 provides in part:

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

(1) the home address or home telephone number of:

....

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

Article 2.12 of the Code of Criminal Procedure includes, in the definition of "peace officers":

- (1) sheriffs and their deputies;
- (2) constables and deputy constables;
- (3) marshals or police officers of an incorporated city, town, or village;
- (4) rangers and officers commissioned by the Public Safety Commission and the director of the Department of Public Safety; [and]
- (5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices. . . .

Additionally, section 51.212 of the Education Code encompasses those campus security personnel employed and commissioned by the governing boards of private institutions of higher learning, including private junior colleges. Educ. Code § 51.212(a). Pursuant to section 552.117, you must withhold the home addresses and home telephone numbers of applicants who fell within these definitions at the time you received the request at issue. Additionally, you must withhold the home addresses and home telephone numbers of current or former state employees if they have opted to keep the information confidential as provided for under section 552.024 of the Government Code. Sections 552.117 and 552.024 protect from public access the home addresses and home telephone numbers of current or former governmental employees who have chosen to keep this information private. Section 552.024 provides that governmental employees who do not want their home addresses and home telephone numbers to be publicly accessible must take that option within fourteen days after starting or ending their employment with the governmental body. After fourteen days, an employee wanting to open or close access must so request in writing. If an election is not made, the information is subject to public access. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4.

However, we have concluded that whether the home addresses and home telephone numbers of *former* peace officers and security officers under the Education Code are excepted from disclosure warrants a more thorough analysis than is normally possible in the limited scope of an informal letter. Currently, there is an open records decision pending in our office, ID# 27336, which we believe will be dispositive of this issue. Therefore, we are awaiting the issuance of this decision prior to issuing a ruling pertaining to whether you may withhold the home addresses of former peace officers and security officers under the Education Code. Therefore, you may withhold those home addresses pending our ruling on ID# 27336. We will notify you of our ruling regarding your request as expeditiously as possible.

You next claim that section 552.101 excepts from disclosure criminal history report information ("CHRI"). You did not submit any such information for this office to review. However, we note that generally, such information is confidential and not subject to disclosure. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Federal regulations prohibit the

release of CHRI maintained in state and local CHRI systems to the general public. *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."), (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."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, assuming that you have CHRI about the applicants in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor.

Next you claim that the privacy powers of section 552.101 except from disclosure the social security and driver's license numbers of the applicants. The exception set out in section 552.101 applies to information made confidential by constitutional and common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The applicants' driver's license numbers and their social security numbers are not excepted from disclosure under either constitutional or common-law privacy. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Therefore, that information may not be withheld under the privacy powers of section 552.101.

However, federal law may prohibit disclosure of these applicants' social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994); *see also* 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, you should ensure that the information is not confidential under this federal statute.¹

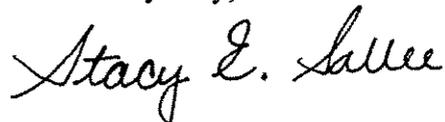
¹The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. *See* Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code Ch. 552) (copy available for House Document Distribution). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

You also claim that section 552.101 excepts from disclosure the starting and ending salaries of the applicants while they were in the private sector and the applicants' character references.² This office has previously held that certain information regarding applicants for public employment is not the kind of "intimate" information that is protected by disclosural privacy. Open Records Decision No. 455 (1987) at 8-9 (holding that educational training; names and addresses of former employers, dates of employment, kind of work, salary per month, and reasons for leaving; names, occupations, addresses, and phone numbers of their character references; their job preferences or abilities; and the names of their friends or relatives who are employed by the government of applicants for governmental employment are public information). Therefore, you may not withhold the applicants' salaries or their character references.³

You next claim that section 552.101 excepts from disclosure the medical history submitted by the applicants. We have concluded that this issue warrants a more thorough analysis than is normally possible in the limited scope of an informal letter. Currently, there is an open records decision pending in our office, RQ-753, which we believe will be dispositive of this issue. Therefore, we are awaiting the issuance of this decision prior to issuing a ruling pertaining to whether you may withhold the applicants' medical history. Therefore, you may withhold this information pending our ruling in RQ-753. We will notify you of our ruling regarding your request as expeditiously as possible.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

²You claim that section 552.102 of the Government Code also protects this information from disclosure. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. Therefore, the test is the same under either exception.

³It appears that you withheld letters of commendation that one of the applicants supplied in support of his application for sheriff. The information contained in those letters is of legitimate public interest and does not involve highly intimate or embarrassing facts about the applicant's private life but rather addresses his performance as a public employee. Therefore, we conclude that the applicant has no privacy interest in those letters and they may not be withheld.

SES/RHS/rho

Ref.: ID# 33785

Enclosures: Marked documents

cc: Mr. Greg Wells
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(w/o enclosures)