



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 12, 2002

Mr. Christopher Gregg  
Gregg & Gregg  
16055 Space Center Boulevard, Suite 150  
Houston, Texas 77062

OR2002-7088

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under 7088chapter 552 of the Government Code. Your request was assigned ID# 173524.

The City of Shoreacres Police Department (the "department"), which you represent, received a request for 11 categories of information relating to a named police officer and to the department's policies concerning driving while intoxicated, driving under the influence of drugs, and search and seizure. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted. We presume that the department has released any other responsive information that existed on the date of its receipt of this request. If not, then the department must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code. Section 143.089 is applicable only to information contained in the personnel file of a police officer or fire fighter of a civil service municipality. *See* Local Gov't Code § 143.089(a), (g); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993,

writ denied); Attorney General Opinion JC-0257 at 6-7 (2000); Open Records Decision No. 562 (1990). You do not indicate, and we are not otherwise informed, that the City of Shoreacres is a civil service municipality under chapter 143 of the Local Government Code. Therefore, you may not withhold any of the requested information under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code.

You also raise section 552.101 in conjunction with section 6103 of title 26 of the United States Code. This section provides that tax return information is confidential. You have not demonstrated, however, and it does not otherwise appear to this office that section 6103 is applicable to any of the requested information. Therefore, the department may not withhold any of the requested information under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

We note, however, that some of the requested information is confidential under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (the "ADA"). The ADA provides that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. In addition, information obtained in the course of a "fitness for duty examination," conducted to determine whether an employee is still able to perform the essential functions of his job, is to be treated as a confidential medical record. *See* 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). The Equal Employment Opportunity Commission (the "EEOC") has determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). We have marked the information that the department must withhold under section 552.101 of the Government Code in conjunction with the ADA.

We also note that section 1701.454 of the Occupations Code is applicable to some of the requested information. Chapter 1701 of the Occupations Code is applicable to the Texas Commission on Law Enforcement Officer Standards and Education. Section 1701.454 provides as follows:

- (a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this section, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the commission employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. In this instance, the requested information includes a form F-5 (Report of Separation of License Holder) and a form L-1 (Report of Appointment/License Application). The requested information indicates that these reports were submitted to the commission. Therefore, you must withhold these reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency compiles criminal history information that pertains to a particular individual, the compiled information takes on a character that implicates that individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). You claim that the requested information includes private criminal history information. We conclude, however, that none of the requested information is excepted from disclosure under section 552.101 in conjunction with *Reporters Committee*.

Common-law privacy under section 552.101 also protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that 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 determined to be private); *see also* Open Records Decision Nos. 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked a small amount of medical information that the department must withhold under section 552.101 in conjunction with common-law privacy.

Certain types of personal financial information also are private under section 552.101. In prior decisions, this office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files). We have marked financial information that must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether a peace officer has family members, regardless of whether the peace officer has complied with sections 552.024 or 552.1175. Section 552.117(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked information that you must withhold under section 552.117(2).<sup>1</sup>

The requested information also contains the social security numbers of members of the public. These social security numbers may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if they were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted information is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted information was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you,

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<sup>1</sup>We note that a governmental body may withhold information that is excepted from disclosure under section 552.117(2) without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 670 at 6 (2001).

however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number to the public, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990. We note that one of the social security numbers in question appears to be that of a person who is represented by the requestor. If so, then the requestor has a special right of access to his client's social security number. *See* Gov't Code § 552.023.<sup>2</sup> A social security number to which the requestor has a right of access under section 552.023 may not be withheld from him under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). We have marked information that relates to Texas driver's license, license plate, and vehicle identification numbers. You must withhold the marked information from the public under section 552.130. The requestor may also have a right of access to some of the driver's license and license plate information under section 552.023. If so, then you may not withhold that information from the requestor under 552.130.

Lastly, we note that the submitted information also includes an account number. Section 552.136 of the Government Code provides as follows:

- (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.

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<sup>2</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself).

(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. We have marked the account number that you must withhold under section 552.136.

In summary, you must withhold the information that is confidential under section 552.101 of the Government Code in conjunction with the ADA and section 1701.454 of the Occupations Code. You also must withhold the medical and personal financial information that is protected by common-law privacy under section 552.101. You must withhold the home address, telephone number, social security number, and family member information of a peace officer under section 552.117(2). The social security number of a member of the public may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The information that relates to Texas driver's license, license plate, and vehicle identification numbers must be withheld from the public under section 552.130. The requestor may have a right of access to one of the social security numbers and some of the driver's license and license plate information under section 552.023. You must withhold the account number under section 552.136. You must release the rest of the submitted information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f): If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

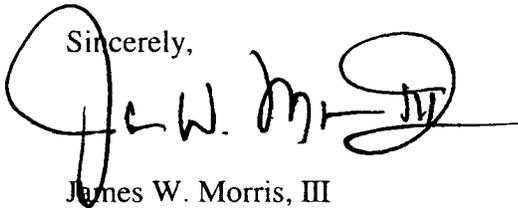
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

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

JWM/sdk

Ref: ID# 173524

Enc: Marked documents

c: Mr. John W. Armstrong III  
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(w/o enclosures)