



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 22, 2003

Lieutenant C.E. Cox
Administrative Services
Bell County Sheriff's Office
P.O. Box 749
Belton, Texas 76513

OR2003-0438

Dear Lt. Cox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175342.

The Bell County Sheriff's Office (the "sheriff") received a request for information relating to a former employee. You state that you have released some of the requested information. You state that you have withheld other information in accordance with Open Records Decision No. 670 (2001) (authorizing governmental bodies to withhold peace officers' home addresses and telephone numbers, social security numbers, and family member information without necessity of requesting attorney general decision). You claim that other responsive information is excepted from disclosure under sections 552.101 and 552.119 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.¹

We first note that the sheriff did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part:

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

(e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information]:

(1) submit to the attorney general:

...

(D) a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1)(D). Section 552.302 provides that “[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

In this instance, the sheriff did not submit to this office, within the time prescribed by section 552.301(e)(1)(D), all of the requested information that he claims is excepted from public disclosure. Thus, with respect to that information, the sheriff did not comply with section 552.301 in requesting this decision. Therefore, the information in question is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of that information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. As sections 552.101 and 552.119 can provide compelling reasons for non-disclosure under section 552.302, we will address these exceptions.

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 other statutes make confidential. Criminal history record information (“CHRI”) obtained from the National Crime Information Center (“NCIC”) or the Texas Crime Information Center (“TCIC”) is made confidential under federal and state law. Federal law governs the dissemination of CHRI obtained from the NCIC network. Federal regulations prohibit the release to the general public of CHRI that is 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”); *see also Open Records Decision No. 565 at 10-12 (1990)*. The federal regulations allow each state to follow its own

individual law with respect to CHRI that it generates. *See id.* at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See Gov't Code* § 411.089(b). Thus, CHRI generated by the federal government or another state may be disclosed only in accordance with the federal regulations. Furthermore, CHRI held by the Texas Department of Public Safety or another criminal justice agency must be withheld from public disclosure as provided by subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right to privacy. Common-law privacy protects private facts about individuals. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information 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). 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 under section 552.101, 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). You state that the submitted documents include a personal history statement that contains personal financial information and a credit report. Upon review of these documents, we conclude that they are excepted from disclosure in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.119 of the Government Code excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. Section 552.119 also adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. The three exceptions under section 552.119 are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See Open Records Decision No. 502* (1988). You indicate that the submitted photographs depict a peace officer. You do not inform us that any of the exceptions under section 552.119 are applicable to these photographs or that the officer depicted in these photographs has executed any written consents to disclosure. We therefore conclude that the sheriff must withhold the submitted photographs under section 552.119.

Lastly, we note that section 552.130 of the Government Code is applicable to some of the submitted information. Section 552.130 excepts from public disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” We have marked Texas driver’s license information that the sheriff must withhold under section 552.130.

In summary, criminal history record information obtained from the NCIC or TCIC networks must be withheld from disclosure under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code. The personal history statement and credit report are excepted from disclosure under section 552.101 in conjunction with common-law privacy. The photographs of a peace officer are excepted from disclosure under section 552.119. The Texas driver’s license information must be withheld under section 552.130.

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).

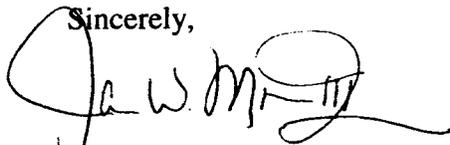
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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', with a stylized flourish at the end.

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

JWM/sdk

Ref: ID# 175342

Enc: Submitted documents

c: Mr. Michael J. Weeks
Weeks and Associates, L.L.C.
316 West 12th Street
Austin, Texas 78701
(w/o enclosures)