



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2005

Ms. Charlotte Bingham
Crenshaw, Dupree & Milam
1500 Broadway, 8th Floor
Lubbock, Texas 79401

OR2005-01393

Dear Ms. Bingham:

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# 218895.

The Howard County Sheriff's Department (the "sheriff"), which you represent, received a request for 20 categories of information pertaining to six identified individuals, as well as specified department policies and procedures. You claim that some of the submitted information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted records pertaining to four of the individuals about whom information was requested. We assume that, to the extent any additional responsive information existed on the date of the sheriff's receipt of this request, you have released it to the requestor. If not, then you must do so immediately. *See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).*

Next, we note that the requestor has subsequently narrowed her request to exclude certain information pertaining to the Harris County Sheriff and three of the sheriff's deputies, including home addresses and telephone numbers, family member information and medical and psychological evaluations. Therefore, any such submitted information is not responsive to this request for information, and need not be released pursuant to this ruling.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.102 and are protected by common law privacy. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). 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 v. Texas Industrial Accident Board* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Government Code. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Accordingly, we will consider your section 552.102 claim and your claim under common law privacy together.

Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. See *id.* This office has found that the following types of information are excepted from required public disclosure under common law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common law privacy), 545 (1990); and some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Accordingly, we have marked financial and medical information in the submitted documents that must be withheld pursuant to section 552.102 and common law privacy.

Although you claim that section 552.102 also protects the names of peace officers not named in the instant request but listed in the submitted personnel files, we note that the names of government employees are expressly public unless they are confidential under other law. Gov't Code § 552.022(a)(2). Because of the greater legitimate public interest in information that relates to public employees, privacy under section 552.102(a) is confined to information that reveals "intimate details of a highly personal nature." See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d at 549-51; see also Open Records Decision Nos. 423 at 2 (1984) (statutory predecessor to section 552.102 applicable when information would reveal intimate details of highly personal nature), 400 at 5 (1983) (statutory predecessor to section 552.102 protects information only if release would lead to clearly unwarranted invasion of privacy). Thus, privacy under section 552.102(a) is "very narrow." See Open Records Decision No. 400 at 5 (1983). Because the names of peace officers not named in the instant request are not highly intimate or embarrassing, this information may not be withheld under

section 552.102 in conjunction with common law privacy. Consequently, the sheriff must release the names of these peace officers to the requestor.

Next, we note that the submitted W-4 forms are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected from disclosure by other statutes. Federal tax return information is confidential under section 6103(a) of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a). The term "return information" includes "the nature, source, or amount of income" of a taxpayer. *See* 26 U.S.C. § 6103(b)(2). Our office has specifically held that a governmental body must withhold a Form W-4 in its entirety. Open Records Decision No. 600 at 9 (1992). Therefore, the sheriff must withhold the submitted W-4 forms under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

The remaining submitted information also includes I-9 forms. We note that section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "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). In this instance, the release of the I-9 forms would be "for purposes other than for enforcement" of the referenced federal statute. Accordingly, we conclude that the sheriff may only release the submitted I-9 forms in compliance with the federal laws and regulations governing the employment verification system.

The remaining submitted information also contains medical records, access to which is governed by the Medical Practice Act (the "MPA"). *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision Nos. 598 (1991). In addition, because hospital treatment is routinely conducted under the supervision

of physicians, documents relating to diagnosis and treatment during a hospital stay also constitute protected medical records. *See* Open Decision Nos. 598 (1991), 546 (1990).

Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). The medical records we have marked may only be released in accordance with the MPA. Open Records Decision No. 598 (1991).

You also contend that some of the remaining submitted information may be exempted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. You state that the officers whose personnel files are the subject of this request are peace officers under article 2.12 of the Code of Criminal Procedure. Based on this assertion, the sheriff must withhold under section 552.117(a)(2) the marked information pertaining to the peace officers named in the instant request.

We note that the remaining records contain additional information that is subject to section 552.117 but does not pertain to the peace officers named in the instant request. If the individuals to whom this information pertains are currently licensed as peace officers, the sheriff must withhold this information under section 552.117(a)(2). If the individuals to whom this information pertains are not currently licensed as peace officers, the information may be exempted from disclosure under section 552.117(a)(1). Section 552.117(a)(1) excepts the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be made at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, if an individual is not currently a licensed peace officer, the sheriff may only withhold this information under section 552.117(a)(1) if the individual made a request for confidentiality under section 552.024 prior to the date of the sheriff's receipt of the request for the information.

Even if section 552.117 is not applicable, the social security numbers of individuals other than currently licensed peace officers may be exempted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and

maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that these social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the sheriff pursuant to any provision of law, enacted on or after October 1, 1990.

We note that the remaining submitted information contains Texas driver's license numbers that are subject to section 552.130 of the Government Code.¹ In relevant part, this section provides:

(a) Information is excepted from the requirement of Section 552.021 if the information 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). Therefore, the sheriff must withhold the Texas driver's license numbers we have marked under section 552.130.

We also note that some of the remaining submitted information is subject to section 552.136 of the Government Code, which states that "[n]otwithstanding 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. Accordingly, the sheriff must withhold the policy numbers we have marked under section 552.136.

In summary, the sheriff must release any additional responsive information to the extent it existed on the date the sheriff received this request. The sheriff must withhold the information we have marked pursuant to section 552.102 and common law privacy. The sheriff must withhold the submitted W-4 forms under section 552.101 in conjunction with section 6103 of title 26 of the United States Code. The sheriff may only release the submitted I-9 forms in compliance with federal laws and regulations governing the employment verification system. The medical records we have marked may only be released

¹ The Office of the Attorney General will raise mandatory exceptions like sections 552.130 and 552.136 on behalf of a governmental body but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

in accordance with the MPA. The sheriff must withhold under section 552.117(a)(2) the information we have marked if it pertains to a currently licensed peace officer. Alternatively, if an individual to whom any marked information pertains is not currently licensed as a peace officer, the information may be excepted from disclosure under section 552.117(a)(1) if the individual to whom the information pertains timely requested the confidentiality of this information. Social security numbers in the submitted information may be excepted under section 552.101 in conjunction with federal law. The sheriff must withhold the marked information under sections 552.130 and 552.136 of the Government Code. All remaining information must be released.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

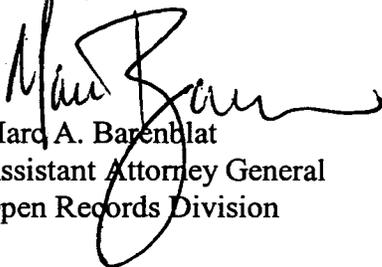
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 218895

Enc. Submitted documents

c: Ms. Diane Shaw
Shaw & Associates
620 West Main Street
Gun Barrell, Texas 75156
(w/o enclosures)