



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2005

Ms. Julie Joe  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2005-09892

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 235415.

The Travis County Constable's Office for Precinct Five (the "constable") received a request for a copy of the requestor's personnel file. You state that you will be releasing some of the requested information. You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected 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)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Tax return information is defined as data furnished to or collected by the Internal Revenue Service with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The

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<sup>1</sup>We note you also raise sections 552.108, 552.136, 552.137, and 552.147, but you make no arguments in support of these exceptions. Therefore, we assume you have withdrawn your claim that they apply to any of the submitted information.

submitted W-4 form is tax return information and must be withheld unless release is authorized under section 6103(e). *See* 26 U.S.C. § 6103(e) (providing for disclosure of tax information to the taxpayer and certain other persons having a material interest in the return).

You claim that some of the submitted information consists of criminal history record information (“CHRI”), which is also encompassed by section 552.101. CHRI that is generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. 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. 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. However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2)(B). Thus, to the extent that the submitted documents contain any CHRI that is confidential under federal law or subchapter F of chapter 411 of the Government Code, the constable must withhold any such information under section 552.101 of the Government Code. We note, however, that DPS has the authority to release an individual’s own CHRI to that individual. *See* Gov’t Code § 411.083(b)(3).

The submitted information includes an L-2 Declaration of Medical Condition and an L-3 Declaration of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education (the “commission”). These declarations are confidential pursuant to section 1701.306 of the Occupations Code, which provides:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306. Therefore, the constable must withhold the L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code.

You claim that a portion of the remaining information is protected by common law privacy, which is also encompassed by section 552.101. The common law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. 540 S.W.2d at 683.

In addition, 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 the financial transaction between an individual and a governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage). We have marked the information that is confidential under common law privacy and excepted from release under section 552.101. The remaining information at issue may not be withheld under section 552.101 on this basis.

We note that section 552.117(a)(2) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer. You state that you have withheld information under section 552.117(a)(2) in accordance with the previous determination in Open Records Decision No. 670 (2001) (stating that governmental body may withhold peace officer's personal information from disclosure under section 552.117(a)(2) without necessity of requesting decision on that information from attorney general); *see also* Open Records Decision No. 673 (2001) (discussing types of previous determinations issued by this office). We have marked additional information that must be withheld under section 552.117(a)(2), as well as information that may not be withheld on this basis.

You claim that some of the remaining information is confidential under section 552.130 of the Government Code, which provides, in relevant part:

(a) Information is excepted from the requirements 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)(1),(2). We have marked the Texas motor vehicle information that must be withheld under section 552.130.

In summary: (1) the submitted W-4 form is confidential under section 6103 of title 26 of the United States Code and must be withheld under section 552.101 unless release is authorized under section 6103(e); (2) to the extent that the submitted documents contain any CHRI that is confidential under federal law or subchapter F of chapter 411 of the Government Code, the constable must withhold any such information under section 552.101 of the Government Code; (3) the submitted Declaration of Medical Condition and Declaration of Psychological and Emotional Health are confidential under 1701.306 of the Occupations Code and must be withheld under section 552.101; (4) we have marked information that must be withheld under section 552.101 in conjunction with common law privacy; (5) the constable must withhold the additional information we have marked under section 552.117(a)(2) of the Government Code, and release the information we have marked that may not be withheld on this basis; and (6) the constable must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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).

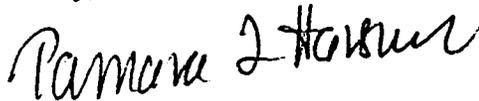
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Texas 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 Office of the Attorney General 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. 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 235415

Enc. Submitted documents

c: Mr. Johnny Tenorio  
5800 Technicenter #523  
Austin, Texas 78721  
(w/o enclosures)