



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 13, 2006

Ms. Catherine Zellers  
City Attorney's Office  
City of Weatherford  
P.O. Box 255  
Weatherford, Texas 76086

OR2006-03736

Dear Ms. Zellers:

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# 246318.

The Weatherford Police Department (the "department") received a request for the personnel file of a named officer. You state that the department is providing the requestor with some of the requested information but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.115, 552.117, 552.130, and 552.137 of the Government Code. 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. You note that the submitted information contains an I-9 form (Employment Eligibility Verification), which is governed by section 1324a of title 8 of the United States Code. This section provides that an I-9 form "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). Release of the form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the I-9 form is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The submitted documents include college transcripts. Section 552.101 also encompasses the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of Title 20 of the United States Code. *See* Gov't Code § 552.026 (incorporating FERPA into the Act). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student, such as a college transcript, and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See id.* § 1232g(a)(4)(A).

We note that the department is not an educational agency or institution. However, FERPA also contains provisions governing access to information in education records transferred by an educational agency or institution to a third party. FERPA provides that an educational agency or institution may only transfer personal information to a third party "on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student." *Id.* § 1232g(b)(4)(B). Federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. 34 C.F.R. § 99.33(a)(2). One of the submitted transcripts indicates that the department did not receive it directly from an educational institution. Therefore, this document is not confidential under FERPA and may not be withheld on that basis under section 552.101. The remaining transcript, which we have marked, may have been received by the department from an educational institution. If the department received the remaining transcript from an educational institution, pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2), the department may only release the transcript upon consent of the named office. If, however, the department did not receive the transcript from the college at issue, then the department may not withhold the transcript under FERPA, but must withhold information that is otherwise confidential.

Section 552.101 also encompasses section 6103(a) of Title 26 of the United States Code. This section provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8). The term "return information" includes "the nature, source, or amount of income" of a taxpayer. Our office has specifically held that a governmental body must withhold a W-4 form in its entirety. Open Records Decision No. 600 at 9 (1992). Accordingly, the department must withhold this form pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of Title 26 of the United States Code.

You also claim that portions of the remaining submitted information are exempted from disclosure pursuant to section 552.101 in conjunction with the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101 *et seq.* Title I of 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. 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 or her job, is to be treated as a confidential medical record as well. *See* 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). In addition, the federal 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). After carefully reviewing the remaining submitted information, we agree that the information we have marked is encompassed by the ADA and must be withheld under section 552.101 of the Government Code.

We note that a portion of the submitted information relates to a workers’ compensation claim. Section 402.083 pertains to records of the Texas Department of Insurance Division of Workers’ Compensation (the “division”), formerly the Texas Workers’ Compensation Commission (the “TWCC”) and provides in part:

- (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the division except as provided by this subtitle.

Labor Code § 402.083(a). This office has interpreted section 402.083 to protect only that “information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers’ compensation claims.” Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee’s name, beneficiary name, commission claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies claimants and is therefore excepted from disclosure under section 552.101 in conjunction with section 402.083 of the Labor Code. Only in those cases where release of the employer’s identity would reveal the claimant’s identity may the identity of an employer be withheld. Section 402.086 of the Labor Code essentially transfers this confidentiality to information that other parties obtain from division files. Section 402.086(a) provides as follows:

- (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

Labor Code § 402.086(a). In Open Records Decision No. 533 (1989), this office determined that the predecessor provision to section 402.086 protected information received from the Industrial Accident Board (now the division), but did not protect information regarding workers compensation claims that the governmental body did not receive from the division. In this case, the information at issue indicates that it was received from the TWCC, currently the division. We note that the claim file information at issue here is not subject to release

under section 402.084 or section 402.085 of the Labor Code. Therefore, the information we have marked is confidential under section 402.086 of the Labor Code and must be withheld pursuant to section 552.101 of the Government Code.

You claim that a portion of the submitted information is subject to section 552.102 of the Government Code, which 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. 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*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. Consequently, we will consider these two exceptions together.

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. The type 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. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: 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); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history); and certain personal choices relating to financial transactions between the individual and the governmental body, *see* Open Records Decision No. 600 (1992) (designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care).

We have marked portions of the submitted information that must be withheld pursuant to section 552.101 in conjunction with common law privacy. We find, however, that you have failed to establish that any of the remaining information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Furthermore, it appears that a portion of the information at issue pertains to the work-related qualifications of a department employee, in which the public has a legitimate interest. *See* Open Records Decision Nos. 659 at 5 (1999) (listing types of information that attorney general has held to be protected by right to privacy), 423 at 2 (1984) (explaining that because of greater legitimate public interest in disclosure of information regarding public

employees, employee privacy under section 552.102 is confined to information that reveals "intimate details of a highly personal nature"). Thus, the department must withhold only the information we have marked under common law privacy.

The department also asserts that the submitted birth certificates must be withheld under section 552.115 of the Government Code. This section provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that "a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official." Since section 552.115 only applies to a birth certificate maintained by the bureau of vital statistics or local registration official, the department may not withhold the certificates of birth registration pursuant to that provision. *See Open Records Decision No. 338 (1982).*

We next address your claim that portions of the submitted information must be withheld under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You inform us that portions of the submitted information pertain to a department peace officer. Therefore, the department must withhold the information we have marked under section 552.117(a)(2).

We also note that some of the remaining information relates to peace officers of a governmental body other than the department. With regard to that information, section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Thus, to the extent the information we have marked relates to peace officers who elect to restrict access to the information in accordance with section 552.1175(b), it must be withheld from disclosure pursuant to section 552.1175.

You also note that the remaining information contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130.

We note that the remaining information contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail addresses at issue in the remaining submitted information are not a type specifically excluded by section 552.137(c). Therefore, in accordance with section 552.137, the department must withhold the e-mail addresses that we have marked unless the department receives consent to release them.

We note that the remaining submitted information contains military discharge information. Section 552.140 of the Government Code provides in relevant part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

Gov't Code § 552.140(a). Section 552.140 provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a), (b). You do not indicate when the department first came into possession of the submitted DD-214 form. Therefore, if this form came into the department's possession on or after September 1, 2003, we conclude that the department must withhold this information, which we have marked, under section 552.140. Otherwise, the form must be released, subject to the markings we have made under section 552.117.

In summary, (1) the submitted I-9 form is confidential and may only be released in accordance with federal laws and regulations governing the employment verification system; (2) to the extent the department received the marked college transcript from an educational

institution, it may only be released with the consent of the officer to whom it pertains under FERPA; (3) the submitted W-4 form is confidential under federal law and must be withheld under section 552.101; (4) the information we have marked is confidential under the ADA and must be withheld under section 552.101; (5) the information we have marked is confidential under section 402.086 of the Labor Code and must be withheld under section 552.101; (6) we have marked information that must be withheld under sections 552.101 and 552.102 in conjunction with common law privacy; (7) the information we have marked pertaining to peace officers must be withheld under sections 552.117(a)(2) and 552.1175 of the Government Code; (8) the Texas motor vehicle record information that we have marked must be withheld under section 552.130 of the Government Code; (9) the e-mail addresses we have marked must be withheld under section 552.137 of the Government Code unless the department receives consent to release them; and (10) the DD-214 form that we have marked must be withheld under section 552.140 of the Government Code if it came into the department's possession on or after September 1, 2003. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/sdk

Ref: ID# 246318

Enc. Submitted documents

c: Ms. Elizabeth Dierdorf  
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