



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2007

Mr. Marc J. Schnall
Langley & Banack
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OR2007-09166

Dear Mr. Schnall:

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# 284385.

The City of Kirby (the "city"), which you represent, received a request for two categories of information pertaining to a named former police officer. You claim that the some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.119, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information contains W-4 forms. Section 552.101 of the Government Code 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. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. 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). Accordingly, the city must withhold the W-4 forms you have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses section 1324a of title 8 of the United States Code, which 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). Release of the submitted I-9 forms and attachment under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we find that the I-9 forms and attachment we have marked are confidential under section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that 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 chapter 411, subchapter F. Upon review, we conclude that the city must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

You claim that the submitted fingerprints are excepted from disclosure under section 552.101 in conjunction with chapter 560 of the Government Code. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). Therefore, the city must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

The submitted information includes L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms, which are required by the Texas Commission on Law Enforcement Officer Standards and Education (the “commission”).

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which provides as follows:

(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(a),(b). The city must withhold the L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

We note that the submitted information contains an F-5 form (Report of Separation of License Holder), which is made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides in relevant part that “[a] report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.” Occ. Code § 1701.454(a). The city must withhold the F-5 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. 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.

Id. § 159.002(b)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). 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. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). The medical records that you have marked may only be released by the city in accordance with the MPA. *See* Open Records Decision No. 598 (1991).

Section 552.101 also encompasses the common-law right to privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court held that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. This office has found that personal financial information not relating to the financial transaction between an individual and governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989). Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review of your arguments and the submitted information, we conclude that the city must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

Next, 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 regarding a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.¹ We note that section 552.117 also encompasses a personal cellular telephone number, provided that the cellular phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). If the former employee at issue was

¹"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

a licensed peace officer at the time of the city's receipt of the request, the city must withhold the information you have marked, except as we have marked otherwise, pursuant to section 552.117(a)(2). The city must also withhold the additional information we have marked under section 552.117 of the Government Code. Pursuant to section 552.117(a)(1), the city must withhold the same information for this former employee if he was not a licensed peace officer at the time of the city's receipt of the request, but elected, prior to the city's receipt of the request, to keep such information confidential.

You claim that some of the remaining information is excepted from public disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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). Accordingly, the city must withhold the Texas motor vehicle information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code 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." *Id.* § 552.136. Accordingly, the city must withhold the information you have marked under section 552.136 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). *Id.* § 552.137(a)-(c). We note that 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 address you have marked is not of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the city must withhold the marked e-mail address in accordance with section 552.137 unless the city receives consent for its release.

Section 552.147 of the Government Code provides that the social security number of a living person is excepted from required public disclosure under the Act.² Therefore, if the social security numbers in the submitted information are not protected under section 552.117 of the Government Code, they may be withheld under section 552.147 of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the city must withhold: (1) the W-4 forms you have marked under section 6103(a) of title 26 of the United States Code; (2) the I-9 forms and attachment we have marked under federal law; (3) the CHRI we have marked under federal law and chapter 411 of the Government Code; (4) the fingerprints you have marked under section 560.003 of the Government Code; (5) the L-2 and L-3 forms we have marked under section 1701.306 of the Occupations Code; (6) the F-5 form we have marked under section 1701.454 of the Occupations Code; (7) the medical records you have marked, absent the applicability of an MPA access provision; and (8) the information you have marked under common-law privacy. If the former employee at issue was a licensed peace officer at the time of the city's receipt of the request, the city must withhold the information you have marked, except as we have marked otherwise, as well as the additional information we have marked, under section 552.117(a)(2). The city must withhold the same information for this former employee if he was not a licensed peace officer at the time of the city's receipt of the request, but elected, prior to the city's receipt of the request, to keep such information confidential under section 552.117(a)(1). The city must also withhold: (1) the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code; (2) the information you have marked under section 552.136 of the Government Code; and (3) the e-mail address you have marked under section 552.137 of the Government Code, unless the owner of this particular e-mail address has affirmatively consented to its public disclosure. If the social security numbers in the submitted information are not protected under section 552.117 of the Government Code, the city may withhold them under section 552.147 of the Government Code. The remaining submitted information must be released.³

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

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

³As our ruling is dispositive, we need not address your remaining claims.

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).

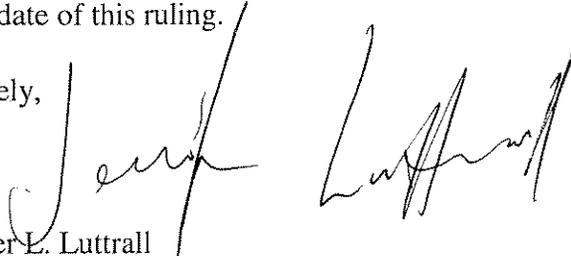
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "Jennifer L. Luttrall". The signature is written in a cursive, flowing style.

Jennifer L. Luttrall
Assistant Attorney General
Open Records Division

JLU/eeg

Ref: ID# 284385

Enc. Submitted documents

c: Ms. J. Martzall
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(w/o enclosures)