



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2007

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2007-09624

Dear Mr. Swope:

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# 285070.

The Harris County Constable Precinct (the "constable") received a request for information pertaining to a named police officer. You state you have released a portion of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, 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 a W-4 form. 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 constable must withhold the W-4 form we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Next, we note that the submitted information includes 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 the 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. 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be "for purposes other than for enforcement" of the referenced federal statute. Accordingly, we conclude that the submitted I-9 form, which we have marked, is confidential for purposes of 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 the DPS may disseminate this information as provided in subchapter F of chapter 411 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 subchapter F of chapter 411. Upon review, we conclude that the constable must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also encompasses chapter 560 of the Government Code which 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). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the constable must withhold the fingerprint information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses common-law 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). Upon review of your arguments and the submitted information, we conclude that the constable must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts the current and former home address and telephone number, social security number, and the family member information of a peace officer regardless of whether the officer made an election under section 552.024 of the Government Code or complies with section 552.1175 of the Government Code.¹ See Gov't Code § 552.117(a)(2). This section applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Thus, the constable must withhold the information we have marked under section 552.117(a)(2) of the Government Code.²

Section 552.1175 of the Government Code provides in part the following:

(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, pursuant to section 552.1175, the constable must withhold the information we have marked under section 552.1175 if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b). To the extent the individual at issue does not elect to keep this information confidential, it may not be withheld on this basis.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

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

²As our ruling is dispositive, we need not address your remaining arguments for this information.

(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. Accordingly, the constable must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, in conjunction with section 552.101 of the Government Code, the constable must withhold (1) the W-4 form we have marked under section 6103(a) of title 26 of the United States Code; (2) the I-9 form we have marked under section 1324a of title 8 of the United States Code; (3) the CHRI we have marked under federal law and chapter 411 of the Government Code; (4) the fingerprint information we have marked under section 560.003 of the Government Code; and (5) the information we have marked under common-law privacy. The constable must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The constable must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue elects to restrict access to this information in accordance with section 552.1175(b). 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,

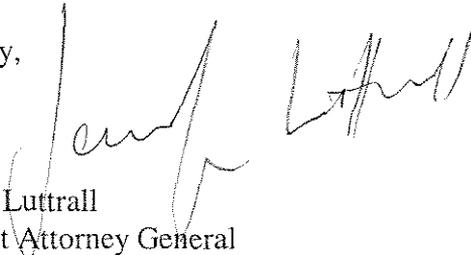
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 285070

Enc. Submitted documents

c: Ms. Dalila Flores
2000 Smith Street
Houston, Texas 77002
(w/o enclosures)