



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2007

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

OR2007-09752

Dear Ms. Joe:

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# 285321.

The Travis County Attorney's Office (the "county") received a request for all information pertaining to the employment of the requestor. You state that you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101<sup>1</sup>, 552.107, 552.117, and 552.137 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup> We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>Although you raise section 552.101 in conjunction with the attorney-client privilege, this office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).*

<sup>2</sup>You additionally raise sections 552.108 and 552.111; however, we do not address these exceptions because you make no arguments explaining how they are applicable to the submitted information. *See Gov't Code §§ 552.301, .302.*

<sup>3</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we address the issue of whether the March 22, 2007 facsimile request sent to the county was a proper request. Section 552.301(c) provides that “a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.” *Id.* § 552.301(c). The county explains that the request was not sent to the facsimile number that it has designated for receipt of open records requests. Thus, we agree with the county that the March 22, 2007 facsimile request was not a proper written request, and therefore did not require the county to respond. *Id.* § 552.301 (governmental body’s duty to request a ruling from the attorney general arises only after it receives a written request).

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. The county asserts that the submitted I-9 form and supporting documentation are excepted from disclosure pursuant to section 552.101 in conjunction with a federal statute. Section 1324a of title 8 of the United States Code provides that an I-9 form and “any information contained in or appended to such 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 and its attachment, which the county has marked, are confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 encompasses chapter 411 of the Government Code. Criminal history record information (“CHRI”) obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Sections 411.083(b)(1) and 411.089(a) of the Government Code 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. *See* Gov’t Code § 411.089(b). We agree that the some of the submitted information, which we have marked, constitutes CHRI that the county must withhold under section 552.101 of the Government Code in

conjunction with section 411.083. However, no part of the remaining information at issue may be withheld on this basis. We note that the Department of Public Safety has the authority to release an individual's own CHRI to that individual. *Id.* § 411.083(b)(3).

Section 552.101 of the Government Code also encompasses section 301.081 of the Labor Code, and provides the following:

(a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

(b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.

(c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.

(d) A person commits an offense if the person violates any provision of this section. An offense under this subsection is a Class A misdemeanor.

Labor Code § 301.081.<sup>4</sup> This office interpreted the predecessor provision of section 301.081(c) to apply to information the Texas Workforce Commission (the "commission") obtains from the records and reports that employers are required to file with the commission. *See* Open Records Decision No. 599 (1992) (construing former V.T.C.S. art. 5221b-9). Thus, the provision applies only to records held by the commission and not to records maintained by the employing entity. *See Rainbow Group, Ltd. v. Texas Employment Comm'n*, 897 S.W.2d 946 (Tex. App.—Austin 1995, writ denied) (construing statutory predecessor); *but see* Open Records Decision Nos. 516 (1989), 490 (1988) (stating that confidential information may be transferred between state agencies without destroying its confidential character). In this instance, the information at issue consists of records maintained by the employing entity. Accordingly, no part of the information at issue may be withheld on this basis.

Section 552.107 of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107. When asserting the attorney-client

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<sup>4</sup>Act of May 24, 2007, 80<sup>th</sup> Leg., R.S., S.B. 1619, § 1 (to be codified as an amendment to Labor Code § 301.081(c), (d)).

privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002).

First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

In this instance, you state that the e-mails you have marked constitute communications between attorneys for the county or their representatives and clients of the county and client representatives. You further state that these communications were made for the purpose of facilitating the rendition of professional legal services and that the confidentiality of these communications has been maintained. Based on your representations and our review, we determine that you may withhold the information you have marked under section 552.107.

Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security numbers, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code §552.117(a)(1). However, we

note that the requestor has a right to her own section 552.117(a)(1) information. *See id.* § 552.023(b) (governmental body may not deny access to person whom information relates on grounds that information is considered confidential by privacy principles). Thus, none of the submitted information may be withheld under section 552.117(a)(1).

Section 552.137 of the Government Code 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). 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. Upon review, we determine that the e-mail address in the remaining information is not excepted from disclosure under section 552.137.

In summary, the county must withhold the submitted I-9 form and attachment under section 552.101 of the Government Code in conjunction with federal law. The county must withhold the CHRI we have marked under section 552.101 in conjunction with section 411.083 of the Government Code. The county may withhold the confidential attorney-client communications it has marked under section 552.107. The remaining information must be released to the requestor.<sup>5</sup>

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).

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<sup>5</sup>We note that the submitted information contains the requestor’s social security number and Texas motor vehicle information. The requestor has a right of access to her own social security number and Texas motor vehicle information. *See generally* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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,



Kara A. Batey  
Assistant Attorney General  
Open Records Division

KAB/mcf

Ref: ID# 285321

Enc. Submitted documents

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(w/o enclosures)