



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2007

Mr. George E. Hyde
Denton, Navarro, Rocha and Bernal
County of Bandera
2517 North Main Avenue
San Antonio, Texas 78212

OR2007-16810

Dear Mr. Hyde:

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# 298203.

The Bandera County Sheriff's Office (the "sheriff"), which you represent, received a request for all information pertaining to a named deputy sheriff. You claim that the requested information is excepted from disclosure under sections 552.101, 552.111, 552.115, 552.1175, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. 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).

Initially, we must address the sheriff's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides the following:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

The sheriff states that it sent to the requestor a copy of its written comments submitted to this office pursuant to section 552.301(e)(1)(A). You state that the shaded portions of the county's brief were redacted in the copy sent to the requestor. After reviewing the sheriff's brief sent to the requestor, we determine that the sheriff redacted information from the copy that does not disclose or contain the substance of the information requested; therefore, we conclude that the sheriff failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although the sheriff claims an exception to disclosure under section 552.111 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Thus, your claim under section 552.111 does not provide a compelling reason for non-disclosure, and the sheriff may not withhold any of the submitted information under that exception. Because your claims under section 552.101, 552.115, 552.1175, 552.130 of the Government Code can provide compelling reasons for non-disclosure, we will consider your arguments under these exceptions.

Next, we note that a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the submitted information contains completed evaluations that are subject to section 552.022(a)(1). You do not claim an exception to disclosure under section 552.108, nor do we find any information in the completed evaluations that is confidential under other law. Accordingly, the completed evaluations, which we have marked, must be released to the requestor pursuant to section 552.022(a)(1). However, we will address your claims for the remaining 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 made confidential by other statutes, such as 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 the 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 sheriff must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

You argue that the remaining submitted information also contains a Report of Separation of License Holder (F-5) as well as L-1 forms, which you argue are made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides in relevant part:

(a) 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. Upon review of the submitted information, we found no F-5 forms that are confidential under section 1701.454 of the Occupations Code. Further, the submitted L-1 forms are not reports or statements required to be filed with the commission under subchapter J of the chapter 1701. Accordingly, none of the submitted information may be withheld under section 552.101 in conjunction with section 1701.454.

The remaining submitted information, does, however, include L-2 Declarations of Medical Condition and L-3 Declarations of Psychological and Emotional Health, which are required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). Chapter 1701 of the Occupations Code, which is also encompassed by section 552.101, is applicable to TCLEOSE. Specifically, section 1701.306 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). Therefore, the sheriff must withhold the L-2 declaration that we have marked under section 552.101 in conjunction with section 1701.306 of the Occupations Code. However, the submitted L-3 declaration is incomplete and unsigned by a psychologist or by a psychiatrist. Accordingly, this document may not be withheld under section 1701.306.

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 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. 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). 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. Accordingly, the sheriff must withhold any CHRI in the submitted documents under section 552.101 of the Government Code.

Section 552.101 also encompasses the Medical Privacy Act (“MPA”), Chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

Occ. Code § 159.002(a)-(c). Section 159.002(c) requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the medical records, which we have marked, may be released only as provided under the MPA. Open Records Decision No. 598 (1991).

You also raise section 552.115 of the Government Code for certain vital statistics information. Section 552.115(a) provides that “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]” Gov’t Code § 552.115(a). Section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official, and not to information held by the sheriff. *See* Open Records Decision No. 338 (1982). Furthermore, we note that the submitted documents do not contain a birth or death record. Accordingly, none of the submitted information may be withheld under section 552.115.

We next note that a portion of the submitted information is excepted from disclosure under section 552.117(a)(2). Section 552.117(a)(2) excepts from public disclosure a peace officer’s home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code.¹ Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, we have marked information that the sheriff must withhold under section 552.117(a)(2) of the Government Code. We note that a post office box number is not a “home address” for purposes of section 552.117.²

You also claim that some of the remaining information is subject to section 552.1175 of the Government Code. This exception provides in relevant part:

(a) This section applies only to:

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

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.117(a)(2) on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²*See* Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

...

(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)-(b). Upon review, we find that you have failed to demonstrate how any portion of the remaining submitted information is confidential for the purposes of section 552.1175. Accordingly, none of the remaining submitted information may be withheld on this basis.

We note that the submitted information also contains Texas driver's license information. Section 552.130 of the Government Code 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). The sheriff must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

In summary, the fingerprints we have marked must be withheld under section 552.101 in conjunction with section 560.003 of the Government Code. The L-2 declaration that we have marked must be withheld under section 552.101 in conjunction with section 1701.306 of the Occupations Code. Any CHRI in the submitted documents must be withheld under section 552.101 in conjunction with chapter 411 of the Government Code. Medical records may be released only in accordance with the MPA. The sheriff must withhold the

information we have marked under section 552.117(a)(2).³ The sheriff must also withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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.

³As our ruling is dispositive under section 552.117(a)(2), we need not address your assertion under section 552.147 regarding social security numbers.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jb

Ref: ID# 298203

Enc: Submitted documents

c: Mr. J. Gary Trichter
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