



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2009

Ms. Laura Garza Jimenez  
Nueces County Attorney  
901 Leopard, Room 207  
Corpus Christi, Texas 78401-3680

OR2009-02391

Dear Ms. Garza Jimenez:

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# 335593.

The County of Nueces (the "county") received a request for the employment and personnel file, all documents regarding leave and vacation, and all documents regarding disciplinary and termination hearings pertaining to a named individual.<sup>1</sup> You state the county has released some of the responsive documents. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 other statutes make confidential. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the

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<sup>1</sup>The county sought and received a clarification of the information requested. *See* Gov't Code 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

term "return information" as "a taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . , or offense[.]" See 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer's designee. See 26 U.S.C. § 6103(c), (e)(1)(A)(i) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection (e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); see also *Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under the federal Freedom of Information Act). Section 6103(c) provides, unless the Secretary of Treasury determines that disclosure would seriously impair tax administration, tax record information may be released to any person or persons as the taxpayer may designate in a consent to such disclosure. See 26 U.S.C. § 6103(c). We note the requestor represents the individual whose tax information is at issue. Therefore, pursuant to section 6103(c) of title 26 of the United States Code, the county must release the submitted W-4 form if this requestor's client has consented to the disclosure of his tax record information to his attorney and the Secretary of Treasury determines that such disclosure would not seriously impair federal tax administration. Otherwise, the submitted W-4 form is confidential under section 6103 of title 26 of the United States Code and must be withheld from the requestor under section 552.101 of the Government Code.

Section 552.101 also encompasses the Medical Practice Act ("MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in pertinent 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 id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Medical records may be released only as provided under the MPA. ORD 598. The 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. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires 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). The medical records you have marked involve the requestor's client. These records, however, must be withheld under the MPA, unless the county receives consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You claim the remaining information is excepted from disclosure under section 552.122(b). You state this information consists of standard test questions that are asked of all public works and building maintenance employees who have driving responsibilities and these questions will continue to be used in the future. You also assert revealing the answers to these questions may reveal the questions themselves. Based on your representations and our review, we find a portion of the remaining information consists of test items under section 552.122(b) of the Government Code. Accordingly, the county may withhold the submitted traffic quiz and the related answers, which we have marked, pursuant to section 552.122(b). The cover sheet, however, does not evaluate any specific knowledge. Accordingly, we determine the cover sheet does not qualify as a test item for the purposes of section 552.122(b) and may not be withheld on this basis.

In summary, the district must release the submitted W-4 form if this requestor's client has consented to the disclosure of his tax record information to his attorney and the Secretary of Treasury determines such disclosure would not seriously impair federal tax administration. Otherwise, the submitted W-4 form must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. Unless the county receives consent for release of the submitted medical records that complies with sections 159.004 and 159.005 of the MPA, the county must withhold the information you have marked under the MPA. The county may withhold the test items we have marked under section 552.122(b). The remaining information must be released.<sup>2</sup>

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

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<sup>2</sup>We note the requestor has a special right of access to information contained in the records that is protected by exceptions and laws designed to protect his client's privacy. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Should the county receive another request for these same records from a person who would not have a special right of access to this information, the county should resubmit this same information and request another ruling from this office. *See id.* §§ 552.301(a), .302.

Ref: ID# 33593

Enc. Submitted documents

c: Requestor  
(w/o enclosures)