



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 16, 2009

Mr. David M. Swope  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2009-03439

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# 337363.

The Harris County Constable's Office, Precinct 7 (the "constable") received a request for the personnel file of a named police officer. You state you have released some of the responsive information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.1175, 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

First, we note that one of the documents at issue is a medical record, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't

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<sup>1</sup>We note that you failed to timely assert section 552.136 of the Government Code. See Gov't Code § 552.301(b) (governmental body must state exceptions that apply not later than tenth day after receiving request). However, because this section is a mandatory exception, we will address your argument. See Gov't Code § 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).

Code § 552.101. Section 552.101 encompasses section 159.002 of the MPA, which provides in part the following:

(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(b), (c). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the portion of the submitted information that constitutes a medical record and that may only be released in accordance with the MPA.

Next, we note that a portion of the submitted information relates to a sex offender who is subject to registration under chapter 62 of the Code of Criminal Procedure. Section 552.101 of the Government Code also encompasses article 62.051 of the Code of Criminal Procedure, which requires a sex offender registrant to provide the following information for the Department of Public Safety ("DPS") sex offender registration database: the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). We have marked information subject to article 62.005, and the constable must withhold or release this information in accordance with article 62.005(b).

Section 552.101 of the Government Code also encompasses title 28, part 20 of the Code of Federal Regulations. Title 28 places limitations on dissemination of criminal history record

information ("CHRI") generated by the National Crime Information Center or by its Texas counterpart, the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies 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 DPS maintains, except that the DPS may disseminate this information in accordance with 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 only release CHRI 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 the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. 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. Thus, the constable must withhold the CHRI, which we have marked, within the submitted information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. *See id.* § 411.083(b)(3).

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code. This section provides that an Employment Eligibility Verification I-9 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). The submitted documents contain an I-9 form. Release of this document in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we find that the submitted I-9 form is confidential under section 1324a of title 8 of the United States Code and must be withheld pursuant to section 552.101 of the Government Code.

We note that the submitted documents include a W-4 form. Section 552.101 of the Government Code encompasses section 6103(a) of title 26 of the United States Code. This office has held that 26 U.S.C. 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of income." *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). Consequently, the constable must withhold the submitted W-4 form pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

The submitted information also contains an L-2 Declaration of Medical Condition form and an L-3 Declaration of Psychological and Emotional Health form required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides:

(a) [TCLEOSE] 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 [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Thus, we find that the constable must withhold the submitted L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

The public availability of fingerprints is governed by sections 560.001, 560.002, and 560.003 of the Government Code. Section 560.001 defines "biometric identifier," for the purposes of these sections, as meaning "a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry." Gov't Code § 560.001(1). Section 560.002 provides that a governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than [the Act]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

*Id.* § 560.002. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003. As there is no indication that the requestor would have a right of access under section 560.002 to the fingerprints that we have marked, the constable must withhold the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision Nos. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history are protected under common-law privacy). The insurance, banking, income, payroll, and property information we have marked constitutes personal financial information. Further, we find that there is not a legitimate public interest in the release of this information. Accordingly, the constable must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

Some of the submitted information is subject to section 552.117 of the Government Code.<sup>2</sup> 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

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<sup>2</sup>Although you assert section 552.1175, this information is properly addressed under section 552.117 since the constable maintains the information as the employer of the officer at issue.

whether the peace officer made an election under sections 552.024 or 552.1175 of the Government Code.<sup>3</sup> Section 552.117 also encompasses cell phone and pager numbers belonging to the officer concerned, provided that the officer pays for his own personal service. *See* Open Records Decision No. 670 at 6 (2001). Accordingly, the constable must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

The submitted documents also contain the personal information of peace officers who are not employed by the constable. This information may be excepted under section 552.1175 of the Government Code, which provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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(b). *See, e.g.*, Open Records Decision No. 678 (2003) (ruling that confidentiality of information subject to section 552.1175 is dependent on a governmental body's receipt of an election of confidentiality from the individual whose information is at issue). Thus, to the extent that the information we have marked relates to licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), the constable must withhold this information under section 552.1175. If the constable does not receive the appropriate elections, this information may not be withheld under section 552.1175.

Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license [or] motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(1), (2). The constable must withhold the information we have marked under section 552.130.

You note that section 552.136 of the Government Code is applicable to some of the submitted information. This exception provides that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

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<sup>3</sup>Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We have marked an insurance policy number that the constable must withhold under section 552.136.

Finally, you note that the submitted information contains the social security numbers of living people. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>4</sup> Gov’t Code §552.147(a). We agree that the constable may withhold the marked social security numbers under section 552.147 of the Government Code.

In summary: (1) the constable must withhold the marked medical information under the MPA; (2) the constable must release or withhold the marked sexual offender registry information in accordance with article 62.005(b) of the Code of Criminal Procedure; (3) the constable must withhold the criminal history record information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (4) the I-9 form in the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (5) the submitted W-4 form must be withheld under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (6) the constable must withhold the submitted L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (7) the constable must withhold the fingerprints in the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (8) the constable must withhold the marked personal financial information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy; (9) the constable must withhold the present and former home addresses and telephone numbers, social security number, and family information of the peace officer employed by the constable, which we have marked, pursuant to section 552.117(a)(2) of the Government Code; (10) the constable must withhold the marked information relating to peace officers not employed by the constable pursuant to section 552.1175 of the Government Code, if the officers are licensed and elect with the constable to withhold such information under section 552.1175(b); (11) the constable must withhold the motor vehicle record information we have marked pursuant to section 552.130 of the Government Code; (12) the constable must withhold the marked insurance policy numbers pursuant to section 552.136 of the Government Code, and (13) the constable may withhold the marked social security numbers pursuant to section 552.147 of the Government Code. The remaining submitted information must be released.

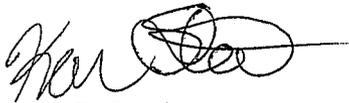
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<sup>4</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Karen E. Stack  
Assistant Attorney General  
Open Records Division

KES/sdk

Ref: ID# 337363

Enc. Submitted documents

c: Requestor  
(w/o enclosures)