



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 20, 2009

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

OR2009-03652

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# 337765 (C.A. File Number 09GEN0005).

The Harris County Constable Precinct 6 (the "county") received a request for information regarding a named former deputy constable. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, 552.140, and 552.147 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 protected by other statutes. You contend that the submitted L-2 (Declaration of Medical Condition) form is confidential under section 1701.306 of the Occupations Code, which provides:

- (a) The [Texas Commission on Law Enforcement Officer Standards and Education] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(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). The county must withhold the submitted L-2 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

We note that some of the remaining information includes mental health records. Section 552.101 of the Government Code also encompasses chapter 611 of the Health and Safety Code, which provides for the confidentiality of records created or maintained by a mental health professional. Section 611.002(a) reads as follows:

Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Health & Safety Code § 611.002. Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *Id.* § 611.001(b). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We have marked the information that constitutes mental health records that the county must withhold under section 552.101 in conjunction with section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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 some kinds of medical information or information indicating disabilities or specific

illnesses and personal financial information not relating to the financial transaction between an individual and a governmental body are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); *see* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that some of the remaining information may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure regardless of whether the officer requested confidentiality under sections 552.024 or 552.1175 of the Government Code. We note that section 552.117(a)(2) of the Government Code is applicable to a peace officer's cellular telephone number only if the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001). We are unable to determine from the information provided whether the former deputy constable at issue is still a licensed peace officer. Thus, we must rule conditionally. If the former deputy constable at issue is still a licensed peace officer, then the county must withhold the marked information under section 552.117(a)(2). However, the marked cellular telephone number may only be withheld if the cellular telephone service was not paid for by the county. If the former deputy constable at issue is not currently a licensed peace officer, then the marked information may not be withheld under section 552.117(a)(2).

If the former deputy constable at issue is not a licensed peace officer, then section 552.117(a)(1) may apply to his personal information. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). The county may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The submitted information does not reflect whether the former deputy constable elected to keep his information confidential pursuant to section 552.024 of the Government Code prior to the county receiving the request at issue. If the former deputy constable made a timely election under section 552.024, the county must withhold the marked information under

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

section 552.117(a)(1). Again however, the marked cellular telephone number may only be withheld if the cellular telephone service was not paid for by the county. If the former deputy constable did not make a timely election under section 552.024, the marked information may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(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.

*Id.* § 552.1175(a), (b). We have marked information in the submitted documents that may be subject to section 552.1175. To the extent this information pertains to a currently licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b), it must be withheld under section 552.1175(b).

Section 552.130 excepts from disclosure "information [that] relates to... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." *Id.* § 552.130. Accordingly, the county must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code.

We note that some of the remaining information is subject to section 552.136 of the Government Code, which provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136. Accordingly, the county must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

We note the remaining information includes an e-mail address subject to section 552.137 of the Government Code, which 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). *See id.* § 552.137(a)-(c). The e-mail address in the remaining information is not specifically excluded by section 552.137(c). As such, this e-mail address, which we have marked, must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

Next, you assert that the submitted DD-214 form is excepted under section 552.140 of the Government Code. Section 552.140 provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a), (b). Upon review, we find that the county first came into possession of the submitted DD-214 form on or after September 1, 2003. Thus, we conclude that the county must withhold the submitted DD-214 form under section 552.140 of the Government Code.

Finally, section 552.147 of the Government Code states that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Upon review, we agree that the county may withhold any remaining social security numbers of living persons under section 552.147 of the Government Code.

In summary, the county must withhold the submitted L-2 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. Also, we have marked the information that constitutes mental health records that the county must withhold under section 552.101 in conjunction with section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045. Next, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the former deputy constable at issue is still a licensed peace officer, then the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the former deputy constable is no longer a licensed peace officer, then the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code, if the former deputy constable made a timely election under section 552.024. However, in either case, the cellular telephone number we have marked may only be withheld if the county did not pay for the cellular telephone service. To the extent the information we have marked under section 552.1175 of the Government Code pertains to a currently licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b), it must be withheld. The county must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code. The county must also withhold the insurance policy numbers we have

marked pursuant to section 552.136 of the Government Code. The e-mail address we have marked must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. The county must withhold the submitted DD-214 form under section 552.140 of the Government Code. The county may withhold any remaining social security numbers of living persons under section 552.147. The remaining information must be released.

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,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

Ref: ID#337765

Enc. Submitted documents

c: Requestor  
(w/o enclosures)