



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 14, 2009

Mr. Douglas E. Manning  
Assistant County Attorney  
Orange County District Attorney's Office  
801 Division  
Orange, Texas 77360

OR2009-09712

Dear Mr. Manning:

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# 348736.

The Orange County Sheriff's Office (the "sheriff") received a request for the personnel files of four officers. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, and 552.137 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. Section 552.101 encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). 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 DPS maintains, except that DPS may disseminate this information as provided in 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 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.* §§ 411.090-411.127. 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. Therefore, the sheriff must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. However, we determine that no portion of the remaining information constitutes CHRI generated by either the TCIC or NCIC databases. Therefore, no portion of the remaining information is confidential under chapter 411 and none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which provides in part:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education (“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) (emphasis added). The sheriff 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 remaining information also contains F-5 forms (Report of Separation of License Holder), which are made confidential by section 1701.454 of the Occupations Code. Section 1701.454, which is encompassed by section 552.101 of the Government Code, provides in relevant part that “[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.” *Id.* § 1701.454(a). The sheriff must withhold the F-5 forms, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. 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 Act). Accordingly, the sheriff must withhold the fingerprint information we have marked in the remaining information under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA 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 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. *Id.* § 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. ORD 565 at 7. Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Upon review, the information we have marked constitutes medical records that may only be released in accordance with the MPA.

You also claim that a portion of the remaining submitted information is subject to sections 611.001 through 611.008 of the Texas Health and Safety Code. Section 552.101 of the Government Code also encompasses chapter 611 of the Texas Health and Safety Code, which specifically addresses the public availability of mental health records. Section 611.002 of the Health & Safety Code provides in pertinent part:

(a) 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.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). Under section 611.001, a “professional” is (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. Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, 611.0045; ORD 565. In this instance, we find that the sheriff has failed to demonstrate how any portion of the remaining information constitutes a mental health record subject to chapter 611 of the Health and Safety Code. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the sheriff’s section 552.102(a) claim in conjunction with its common-law privacy claim under section 552.101 of the Government Code.

This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 545 (1990); and personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545, 523 (1989) (individuals’ mortgage payments, assets, bills, and credit history). However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (public employee’s job performance does not generally constitute employee’s private affairs), 455 (public employee’s job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). You have marked, and we have marked, information that is highly intimate or embarrassing and of no legitimate concern to the public. However, we find that no portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, no portion of the remaining information may be withheld under section 552.101 under common-law privacy. Accordingly, with the exception of the information we have marked for release, the sheriff must withhold the information you have marked, and the information we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.<sup>1</sup> Gov't Code § 552.117(a)(2). We note that section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). We note a post office box number is not a "home address" for purposes of section 552.117. *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). Accordingly, with the exception of the information we have marked for release, the sheriff must withhold the information you have marked, and the additional information we have marked, pursuant to section 552.117(a)(2). We find that no portion of the remaining information contains the home address, home telephone number, social security number, or family member information of a peace officer. Thus, no portion of this information may be withheld under section 552.117.

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.

Gov't Code § 552.1175(a)(1), (b). You have marked information concerning peace officers who are not employed by the sheriff. The sheriff must withhold the information you have marked under section 552.1175 to the extent the marked information relates to a peace

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<sup>1</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

officer who elects to restrict access to the information in accordance with section 552.1175(b).

Section 552.130 of the Government Code exempts 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. We note, however, some of the information you have marked, including an individual's date of birth, is not information that relates to a motor vehicle operator's or driver's license or a motor vehicle title or registration. We have marked this information for release. Accordingly, with the exception of the information we have marked for release, the sheriff must withhold the information you have marked, and the additional information we have marked under section 552.130 of the Government Code.

We note some of the remaining information is subject to section 552.136 of the Government Code, which states 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."<sup>2</sup> *Id.* § 552.136. The sheriff must withhold the information we have marked under section 552.136.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Accordingly, with the exception of the information we have marked for release, the sheriff must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

In summary, the sheriff must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The sheriff 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 sheriff must withhold the F-5 forms, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff must withhold the fingerprint information we have marked in the remaining information under section 552.101 in conjunction with section 560.003 of the Government Code. The sheriff may only release the marked medical

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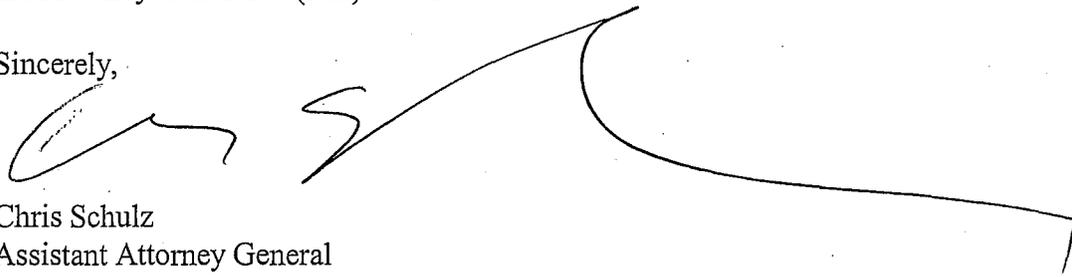
<sup>2</sup> The Office of the Attorney General will raise a mandatory exception like section 552.136 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

records in accordance with the MPA. With the exception of the information we have marked for release, the sheriff must withhold the information you have marked, and the information we have marked, under section 552.101 in conjunction with common-law privacy. With the exception of the information we have marked for release, the sheriff must withhold the information you have marked, and the additional information we have marked, pursuant to section 552.117(a)(2). The sheriff must withhold the information you have marked under section 552.1175 to the extent the marked information relates to a peace officer who elects to restrict access to the information in accordance with section 552.1175(b). With the exception of the information we have marked for release, the sheriff must withhold the information you have marked, and the additional information we have marked under section 552.130 of the Government Code. The sheriff must withhold the information we have marked under section 552.136 of the Government Code. With the exception of the information we have marked for release, the sheriff must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure. The remaining information must be released.<sup>3</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,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

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<sup>3</sup> We note that the remaining information contains social security numbers. 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.

Ref: ID# 348736

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)