



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2009

Ms. Carolyn Foster
Assistant General Counsel
Parkland Health & Hospital System
5201 Harry Hines Boulevard
Dallas, Texas 75235

OR2009-15301

Dear Ms. Foster:

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# 359613.

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "district") received a request for personnel, disciplinary, and employment information relating to the requestor's client. You state that you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.117, 552.1175, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, you contend that the request at issue was not a valid request under the Act because the request was delivered via facsimile to a district human resources business partner instead of the district's Officer of Public Information. Section 552.301(c) provides that "a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." Gov't Code § 552.301(c). We generally agree that a request for information sent via facsimile must be addressed to the officer for public information or a person designated by that officer in order to be valid under the Act. We note, however, the district did treat the request for information as a proper written request and states it is releasing information in response to this facsimile request and subsequently requested a

decision from our office under the Act. Thus, the district has determined that this facsimile is a valid request for information under the Act. Accordingly, we will rule on the submitted information.

Next, we note that a portion of the submitted information, which we have marked, was created after the date of the request. The district need not release non-responsive information in response to this request, and this ruling will not address that information.

We also note that you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See id.* § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, that you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of some of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, because we are unable to discern the nature of the remaining redacted information, the district has failed to comply with section 552.301, and such information, which we have marked, is presumed public under section 552.302. *See Gov't Code* §§ 552.301(e)(1)(D), .302. Thus, we conclude that the district must release the marked information to the requestor. If you believe that the marked information is confidential and may not lawfully be released, you must challenge this ruling in court. In the future, the district should refrain from redacting any information it submits to this office when seeking an open records ruling.

Next, we address your claim under section 552.103 of the Government Code, as it is potentially the most encompassing of the exceptions you claim. Section 552.103 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated

on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You argue the district anticipated litigation on the day it received the instant request for information from the requestor because he represents the former employee in an appeal of his termination. However, as we stated above, the fact that a party has hired an attorney who makes a request for information is insufficient to show that litigation is reasonably anticipated. *Id.* You also do not explain how the appeal process constitutes litigation of a judicial or quasi-judicial nature for purposes of section 552.103. *See generally* Open Records Decision No. 301 (1982) (discussing meaning of “litigation” under predecessor to section 552.103). We also find you have not otherwise established that the district reasonably anticipated litigation when it received the request for information. Thus, the district may not withhold the submitted information under section 552.103.¹

¹We also note section 552.103 does not apply to information that has either been obtained from or provided to the opposing party. *See* Open Records Decision Nos. 349 (1982), 320 (1982). The former employee has seen some of the submitted information.

You assert Exhibits C, D, and E are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). By its terms, section 552.108 only applies to a law enforcement agency or prosecutor. The district is not a law enforcement agency. However, where an incident involving alleged criminal conduct is still under active investigation, section 552.108 may be invoked by the proper custodian of information relating to the incident. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides the attorney general with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information.

You assert that the Parkland Police Department (the "department") objects to the release of the information at issue because it relates to the department's ongoing investigations involving the requestor. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). We note Exhibits C, D, and E consist of internal affairs investigations. Although you state that Exhibit C "could become a criminal investigation," we find you have failed to explain how release of the submitted internal affairs investigations would interfere with a currently pending criminal investigation or prosecution. Thus, we find you have failed to establish the applicability of section 552.108(a)(1) to the internal affairs investigations in this instance.

However, you inform us that an incident report within Exhibit C pertains to a pending criminal investigation by the department. Based on this representation and upon review, we agree that release of the information at issue, which we have marked, would interfere with the department's ongoing criminal investigation. Therefore, the district may generally withhold this report pursuant to section 552.108(a)(1).

We note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), and includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Accordingly, with the exception of basic information, the district may

withhold the information we have marked under section 552.108(a)(1) of the Government Code.

Next, you raise section 552.107 of the Government Code for Exhibit F and a portion of Exhibit G. Section 552.107(1) protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You contend that the information at issue either consists of or documents privileged attorney-client communications between district attorneys and district employees. You state that these communications were made in confidence and have maintained their confidentiality. Based on your representations and our review of the information at issue, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Therefore, the district may withhold Exhibit F and the information you have marked in Exhibit G under section 552.107 of the Government Code.

Next, we address your assertion that Exhibits I-1 through I-9 are excepted from disclosure in their entirety under section 552.102 of the Government Code, which 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 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. See *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82.

The information you seek to withhold pertains solely to the qualifications, job performance, and work conduct of public employees. This office has stated, in numerous decisions, that 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 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (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). Thus, the district may not withhold any portion of the remaining information under section 552.102.

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. You argue that a portion of Exhibit H-2 is subject to the Privacy Rule adopted by the United States Department of Health and Human Services, Office for Civil Rights, to implement the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. See HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 ("Privacy Rule"); see also Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. See 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. *See* Open Records Decision No. 681 (2004). In that decision, we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *Id.*; *see* 45 C.F.R. § 164.512(a)(1). We further noted that the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See* ORD 681 at 9; *Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.) (disclosures under the Act fall within section 164.512(a)(1) of the Privacy Rule); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the district may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

You also argue that the portion of Exhibit H-2 at issue is subject to the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 552.101 of the Government Code also encompasses section 159.002 of the of the MPA, which provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (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(a), (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). Upon review, we find you have failed to demonstrate how the information at issue constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician for the purposes of the MPA. Accordingly, no portion of Exhibit H-2 may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

You also raise section 241.152 of the Health and Safety Code for the portion of Exhibit H-2 at issue. Section 552.101 also encompasses section 241.152 of the Health and Safety Code, which states in relevant part:

- (a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

Health & Safety Code § 241.152(a). Section 241.151(2) of the Health and Safety Code defines "health care information" as "information recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." *Id.* § 241.151(2). In this instance, you do not explain how the information at issue relates to the history, diagnosis, treatment, or prognosis of a patient. Thus, we find you have failed to establish that the portion of Exhibit H-2 at issue is confidential under section 241.152 of the Health and Safety Code, and none may be withheld on this basis.

Section 552.101 also encompasses section 611.002 of the Health and Safety Code. Section 611.002 provides in 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). 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. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). After reviewing the information at issue, we find that no portion of the information at issue in Exhibit H-2 is subject to chapter 611 of the Health and Safety Code. Accordingly, the district may not withhold any

of the submitted information under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 also encompasses section 773.091 of the Health and Safety Code, which provides in relevant part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). You assert the portion of Exhibit H-2 at issue is confidential under section 773.091. The submitted information, however, was not created by emergency medical services ("EMS") personnel or by a physician providing medical supervision. Consequently, you have failed to demonstrate how the submitted documents constitute records of the identity, evaluation, or treatment of a patient created by EMS personnel or a physician providing medical supervision. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with section 773.091 of the Health and Safety Code.

You also contend that the portion of Exhibit H-2 at issue, along with portions of Exhibits E and I-3, are confidential under the doctrines of common-law privacy and constitutional privacy. Section 552.101 also encompasses common-law privacy and constitutional privacy. As we set forth in our discussion of section 552.102 of the Government Code, common-law privacy protects information if the information (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.*, 540 S.W.2d at 685. 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 determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently; and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope

of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)).

You claim portions of Exhibits E, H-2, and I-3 are excepted from disclosure under section 552.101 in conjunction with common-law and constitutional privacy. Upon review, we find that a portion of the information, which we have marked, constitutes highly intimate or embarrassing information that is of no legitimate concern to the public. Accordingly, the district must withhold the information we have marked in Exhibit H-2 under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we find that none of the remaining information at issue in Exhibits E, H-2, and I-3 constitutes highly intimate or embarrassing information that is of no legitimate concern to the public. Therefore, none of the remaining information may be withheld based on common-law privacy. Furthermore, we conclude you have not shown any of the remaining information in Exhibits E, H-2, and I-3 comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. *See* Open Records Decision Nos. 470, 455, 444, 423 at 2. Therefore, the remaining information at issue in Exhibits E, H-2, and I-3 may not be withheld under section 552.101 on the basis of constitutional privacy.

Section 552.101 also encompasses confidential 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. *See* 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. 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we agree that a portion of the information, which we have marked, constitutes CHRI, and must be withheld under section 552.101 of the Government Code. However, the district has failed to establish how any portion of the remaining information you have marked constitutes CHRI for the purposes

of chapter 411 of the Government Code. Therefore, no portion of the remaining information may be withheld on that basis.

Section 552.101 also encompasses section 1703.306 of the Occupations Code, which provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. In this instance, the requestor is the attorney of the polygraph examinee. Thus, the district has the discretion to release the polygraph information of the client, which we have marked, pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permits, but does not require, examination results to be disclosed to examinees).

Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests confidentiality for that information under

section 552.024.² Gov't Code § 552.117(a)(2). We note that section 552.117 does not encompass an employee's date of birth. We also note that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See id.* § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at *home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). We are unable to determine from the information provided whether the some of the individuals whose information is at issue are currently licensed peace officers. To the extent the individuals at issue are currently licensed peace officers as defined by article 2.12, the district must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

If the individuals are not currently licensed peace officers, section 552.117(a)(1) may apply to the information at issue. Further, you have marked personal information of district employees that is subject to section 552.117(a)(1). Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989).

You state, and provide documentation showing that most of the employees whose information you have marked elected to keep their information confidential prior to the date the district received the instant request. Accordingly, with the exception of dates of birth and the information we have marked for release, we find that the district must withhold the information that you have marked in Exhibits D, H-1, I-3, and I-9 under section 552.117(a)(1).³ If the remaining employees are not licensed peace officers, but they elected to keep their personal information confidential pursuant to section 552.024 prior to the date the district received the present request, then the district must withhold the marked information under section 552.117(a)(1). If, however, the employees at issue are not licensed peace officers and did not make a timely election pursuant to section 552.024, then the district may not withhold this information under section 552.117.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a

²"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

³As our ruling on this information is dispositive, we need not address your remaining arguments for this information.

Texas agency is excepted from public release.⁴ Gov't Code § 552.130(a)(1), (2). We have marked the Texas motor vehicle record information that the district must withhold under section 552.130 of the Government Code.

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.⁵ *Id.* § 552.147(a). We agree the district may withhold the social security numbers you have marked under section 552.147.

In summary, the district must withhold: (1) the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the information we have marked under section 552.101 in conjunction with common-law privacy; (3) with the exception of dates of birth and the information we have marked for release, the district must withhold the information that you have marked in Exhibits D, H-1, I-3, and I-9 under section 552.117(a)(1); (4) To the extent the remaining employees at issue are licensed peace officers, the district must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the remaining employees are not licensed peace officers, but they elected to keep their personal information confidential prior to the date the district received the present request, then the district must withhold the marked information under section 552.117(a)(1) of the Government Code; and (5) the information we have marked under section 552.130 of the Government Code. The district has the discretion to release the polygraph information of the requestor's client, which we have marked, pursuant to section 1703.306(a)(1). The district may withhold Exhibit F and the information you have marked in Exhibit G under section 552.107 of the Government Code. With the exception of basic information, the district may withhold the report we have marked in Exhibit C under section 552.108(a)(1) of the Government Code. The district may withhold the social security numbers you have marked under section 552.147 of the Government Code. The remaining responsive information must be released.⁶

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note that section 552.147(b) 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.

⁶We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has a 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). Because such information may be confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 359613

Enc. Submitted documents

cc: Requestor
(w/o enclosures)