



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2009

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

OR2009-17266

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# 363376 (C.A. File No. 09GEN1686).

The Harris County Constable Precinct 5 (the "constable") received a request for a named officer's personnel file. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.115, 552.117, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 6103(a) of title 26 of the United States Code. This office has held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision

¹Although you raise section 552.1175 of the Government Code, section 552.117 is the proper exception for information that the constable holds in its capacity as an employer. Furthermore, although you raise section 552.102 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. See Gov't Code §§ 552.301, .302.

No. 600 (1992) (W-4 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, which we have marked, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.²

Section 552.101 also encompasses section 550.065 of the Transportation Code. The submitted information includes accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the constable with at least two of the three pieces of information pursuant to section 550.065(c)(4). Therefore, the constable must withhold the submitted accident report forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.³

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. 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.

²As our ruling is dispositive of this information, we need not address your remaining arguments against disclosure of this information.

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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. However, information relating to routine traffic violations is not excepted from release under section 552.101 of the Government Code on this basis. *Cf. id.* § 411.082(2)(B). Upon review, we find that the information we have marked constitutes CHRI, and must be withheld under section 552.101 in conjunction with section 411.083 of the Government Code. However, the remaining information you have marked does not constitute CHRI, and it may not be withheld on the basis of section 411.083 of the Government Code.

Section 552.101 also encompasses section 411.192 of the Government Code, which governs the release of information maintained by DPS concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides, in part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

...

(d) This section does not prohibit [DPS] from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by [DPS].

Id. § 411.192(a), (b), (d). We have marked a portion of the submitted information that is related to concealed handgun licenses. It appears the constable obtained that information from DPS. In this instance, the requestor is not a criminal justice agency, nor is the requestor a license holder whose information is at issue. Further, we note that section 411.193 is not applicable in this instance. *See id.* § 411.193 (making a statistical report including the number of licenses issued, denied, revoked, or suspended by the department during the preceding month available to the public). Therefore, the constable must withhold the

concealed handgun license information we have marked under section 552.101 in conjunction with section 411.192 of the Government Code.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 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). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the constable must withhold the fingerprint information we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. However, the remaining information you have marked does not constitute fingerprint information, and it may not be withheld on the basis of section 560.003.

You state that the submitted information contains L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by 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 the following:

(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). Upon review of the remaining information, we find that it does not contain an L-2 or L-3 declaration. Consequently, the constable may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007, which provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). We find that the information we have marked involves juvenile delinquent conduct so as to fall within the scope of section 58.007(c). *See id.* § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of the Family Code); *see also id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Thus, we find that the information we have marked is confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.⁴

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that personal financial information not relating to the financial transaction between an

⁴As our ruling is dispositive of this information, we need not address your remaining arguments against disclosure of this information.

individual and a governmental body and the compilation of an individual's criminal history are generally excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990); cf. *United States Dep't of Justice v. Reporters Comm.*, 489 U.S. at 764. Furthermore, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. Cf. *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). This office has found that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find portions of the remaining information are highly intimate or embarrassing and not of legitimate public interest. Therefore, the constable must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁵ However, you have not demonstrated the remaining information you have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the remaining information you have marked may not be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.115(a) of the Government Code provides that "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]" Gov't Code § 552.115(a). Section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official, and not to information held by the constable. See Open Records Decision No. 338 (1982). Therefore, none of the information at issue may be withheld under section 552.115.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note that section 552.117 is not applicable to officers' names, ages, work telephone numbers, and birth dates. *Id.* § 552.117(a). Section 552.117(a)(2) only applies to records that a governmental body is holding in an employment capacity. 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). Accordingly, the constable must withhold the named officer's information we

⁵As our ruling is dispositive of this information, we need not address your remaining arguments against disclosure of this information.

have marked under section 552.117(a)(2) of the Government Code.⁶ However, the constable must only withhold cellular telephone numbers we have marked if the officer at issue paid for the service with his own funds. Furthermore, the remaining information you have marked does not relate to the home address, home telephone number, social security number, or family information of a peace officer. Therefore, the constable may not withhold any of the remaining information you have marked under section 552.117.

Section 552.130 of the Government Code 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.” Gov’t Code § 552.130(a)(1), (2). Accordingly, the constable must withhold the driver’s license and motor vehicle record information we have marked under section 552.130 of the Government Code.⁷ However, the remaining information you have marked may not be withheld under section 552.130.

Section 552.136 states that “[n]otwithstanding any other provision of [the Act], 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(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, the constable must withhold the information we have marked under section 552.136 of the Government Code.⁸ However, the remaining information you have marked does not contain a credit card, debit card, charge card, or access device number. Therefore, the constable may not withhold any of the remaining information under section 552.136.

You claim the remaining information contains social security numbers excepted from disclosure under section 552.147 of the Government Code. This section provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). Upon review, we find that the remaining information does not contain any social security numbers. Consequently, the constable may not withhold any of the remaining information under section 552.147 of the Government Code.

In summary, (1) the constable must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the

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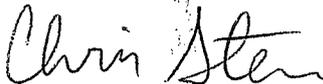
⁸As our ruling is dispositive of this information, we need not address your remaining argument against disclosure of this information.

United States Code; section 550.065 of the Transportation Code; sections 411.083, 411.192, and 560.003 of the Government Code; section 58.007 of the Family Code; and common-law privacy; (2) the constable must withhold the information we have marked under section 552.117(a)(2) of the Government Code; (3) the constable must withhold the information we have marked under section 552.130 of the Government Code; and (4) the constable must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 363376

Enc. Submitted documents

c: Requestor
(w/o enclosures)