



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2009

Ms. Deborah F. Harrison  
Assistant District Attorney  
Special Crimes Division-Civil Section  
Collin County District Attorney  
2100 Bloomdale Road, Suite 20004  
McKinney, Texas 75071

OR2009-18125

Dear Ms. Harrison:

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# 365178.

The Collin County District Attorney's Office (the "district attorney") received two requests for the personnel records of a named former district attorney employee. The first request for information also seeks a specified e-mail sent by the named employee. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code.<sup>1</sup> You also state you have notified the named employee whose information is at issue of this request for information and of his right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Although you also raise section 552.1175, the proper exception in this instance is section 552.117, because the district attorney holds the information in an employment context. Additionally, although you also raise section 552.024 of the Government Code as an exception to disclosure, we note this section is not an exception to public disclosure under the Act. Rather, section 552.024(c)(2) permits governmental bodies to redact information relating to an employee, officer, or former employee who has properly elected to keep such information private, without the necessity of requesting a decision from this office.

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 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 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 Board*, 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 district attorney's section 552.102(a) claim in conjunction with its common-law privacy claim under section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate or 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. However, there is a legitimate public interest in the qualifications of a public employee and how that employee performs as a public servant and satisfies employment conditions. See generally Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). The information at issue pertains to the job performance and termination of a district attorney employee. Therefore, we conclude there is a legitimate public interest in this information. Accordingly, the district attorney may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy or under section 552.102(a) of the Government Code.

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 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. Upon review, we agree a portion of the submitted information, which we have marked, consists of CHRI which must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. However, we find none of the remaining information constitutes CHRI for the purposes of chapter 411. Therefore, the district attorney may not withhold any portion of the remaining information on such basis.

You assert some of the remaining information is confidential under article 55.03 of the Code of Criminal Procedure, which is also encompassed by section 552.101. Article 55.03 concerns the effect of an expunction order and provides the following:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides in relevant part:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state . . . and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

*Id.* art. 55.04, § 1. This office has previously determined the expunction statute prevails over the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as “those records are not subject to public disclosure under the [Act]”). You inform us some of the remaining information is subject to an order of expunction. You have provided this office with a copy

of the expunction order. Accordingly, the information subject to the order of expunction, which we have marked, is confidential under article 55.03, and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

Section 552.117(a)(1) of the Government Code provides information is excepted from disclosure if it relates to a current or former employee's home address, home telephone number, social security number, or reveals whether the employee has family members. *See* Gov't Code § 552.117(a)(1). The district attorney is required to withhold this information if the employee timely requested that this information be kept confidential under section 552.024 of the Government Code. *See* Open Records Decision Nos. 622 (1994), 455 (1987); *see generally* Open Records Decision No. 530 (1989) (stating that whether particular piece of information is public must be determined at time request for it is made). However, because section 552.117 protects personal privacy, we note the second requestor has a special right of access to his own private information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987). Therefore, pursuant to section 552.117(a)(1), the district attorney must withhold the personal information we have marked from the first requestor, if the employee at issue made a timely election under section 552.024 of the Government Code. If this individual did not make a proper election under section 552.024, then his personal information must be released to both requestors.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130 (a)(1)-(2). This exception also protects personal privacy. Accordingly, the second requestor has a right of access under section 552.023 to his own Texas motor vehicle record information. *See id.* § 552.023(b); ORD 481 at 4. However, we find the district attorney must withhold the marked Texas motor vehicle record information from the first requestor under section 552.130.

Section 552.136 of the Government Code provides "[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." Gov't Code § 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.* Although you have marked some information as account numbers, you have failed to demonstrate how this information constitutes access device numbers for purposes of section 552.136. Thus, no portion of the submitted remaining information may be withheld under section 552.136.

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<sup>2</sup>As our ruling is dispositive for this information, we do not address your remaining argument against its disclosure.

The remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 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). We note the second requestor has a right of access to his own e-mail address. *Id.* § 552.137(b) (owner of e-mail address may consent to release of e-mail address). You have marked an e-mail address that does not belong to a member of the public. We have marked this e-mail address for release. However, the remaining e-mail addresses you have marked in the remaining information are not of a type specifically excluded by section 552.137(c). Therefore, the district attorney must withhold from the first requestor the e-mail addresses you have marked and the additional e-mail address we have marked, with the exception of the e-mail address we have marked for release, under section 552.137, unless the district attorney receives consent for their release. With the exception of the second requestor’s own e-mail address and the e-mail address we have marked for release, the district attorney must withhold the marked e-mail addresses from the second requestor under section 552.137, unless the district attorney receives consent for their release.

In summary, the district attorney must withhold the (1) CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (2) marked information subject to the order of expunction under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure; (3) personal information we have marked from the first requestor under section 552.117(a)(1) of the Government Code, if the employee at issue made a timely election of confidentiality; (4) marked Texas motor vehicle record information from the first requestor under section 552.130 of the Government Code; and (5) marked e-mail addresses, except for the e-mail address we have marked for release and the requestor’s own e-mail address from him, under section 552.137 of the Government Code unless the district attorney receives consent to release the e-mail addresses.<sup>3</sup> The remaining information must be released.<sup>4</sup>

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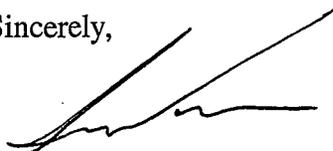
<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license and plate numbers under section 552.130 of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>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. Gov’t Code § 552.147. Thus, if section 552.117(a)(1) does not apply to the marked social security number, the district attorney may withhold the social security number under section 552.147(b) from the first requestor as the second requestor has a right his own social security number. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/sdk

Ref: ID# 365178

Enc. Submitted documents

c: Requestor  
(w/o enclosures)