



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2009-18357

Dear Ms. Rangel:

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# 365697.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for the personnel file of a named officer.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, including section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision 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 his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the

¹You state that the requestor has withdrawn the portion of the request seeking payroll records.

existence, or possible existence, of liability . . . for any tax, penalty, . . . , or offense[.]” 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 sheriff must withhold the W-4 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses section 550.065 of the Transportation Code. The remaining information includes copies of ST-3 accident reports completed pursuant to chapter 550 of the Transportation Code. See Transp. Code § 550.064 (Texas Peace Officer’s Accident Report form). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides at least two of the following three pieces of information: (1) date of the accident; (2) specific location of the accident; and (3) name of any person involved in 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.* § 550.0601. In this instance, the requestor did not provide the sheriff with the requisite pieces of information. Accordingly, the sheriff must withhold the ST-3 accident reports we have marked under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code.

You seek to withhold fingerprint information contained in the remaining documents. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 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). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the sheriff must withhold the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You claim that a portion of the remaining information is excepted from public disclosure on the basis of section 1701.454 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.454 governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”). Section 1701.454 provides as follows:

(a) A report or statement submitted to the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. You seek to withhold documents pursuant to section 1701.454. However, the remaining information does not include reports or statements submitted to TCLEOSE for the purposes of section 1701.454. Accordingly, none of the remaining information is confidential under section 1701.454, and the sheriff may not withhold it under section 552.101 on that ground.

We note the remaining information includes the named officer's L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms, which are subject to section 1701.306 of the Occupations Code. Section 1701.306, which is encompassed by section 552.101 of the Government Code, provides as follows:

(a) The [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.

Id. § 1701.306. Therefore, the sheriff must withhold the L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.²

Next, you raise section 552.101 of the Government Code in conjunction with the informer's privilege for some of the remaining information. Section 552.101 encompasses information protected by the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961))*. The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5*. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

You contend a portion of the remaining information is protected from disclosure under section 552.101 in conjunction with the common-law informer's privilege. However, you have not sufficiently demonstrated that a violation of law was reported to an official having a duty to inspect or enforce the alleged violations. Accordingly, we find the sheriff has failed to demonstrate that the informer's privilege applies to the remaining information. *See generally Open Records Decision No. 150 (1977) (stating that predecessor to the Act places burden on governmental body to establish why and how exception applies to requested information)*. Therefore, the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with the informer's privilege.

We note some of the remaining information is excepted from disclosure on the basis of common-law privacy, which is also encompassed by section 552.101. The doctrine of common-law privacy protects information if it (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the

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

workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find that portions of the remaining information, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. Thus, the department must withhold this information under section 552.101 on the basis of common-law privacy.

You claim portions of the remaining information are protected under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, 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.³ Gov't Code § 552.117(a)(2). We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision Nos. 670 at 6 (2001), 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). We have marked personal information pertaining to the named officer and the Chief Deputy that must be withheld pursuant to section 552.117(a)(2) of the Government Code; however, the sheriff may only withhold the marked cellular telephone and pager number if the named officer paid for the cellular telephone or pager service with his own funds.⁴ We note the remaining information includes the social security numbers of other individuals. To the extent these individuals are licensed peace officers who are current or former employees of the sheriff, the sheriff must withhold the social security numbers we have marked under section 552.117(a)(2) of the Government Code. However, to the extent these individuals are licensed peace officers who are not current or former employees of the sheriff, the sheriff may not withhold the information at issue under section 552.117(a)(2) of the Government Code. In that instance, however, the social security numbers may be subject to section 552.1175 of the Government Code.⁵

Section 552.1175 of the Government Code provides in part:

³"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

⁴As our ruling¹ is dispositive, we need not address your argument under section 552.147 of the Government Code for this information.

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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(b). If the licensed peace officers are not current or former employees of the sheriff, the sheriff must withhold the marked social security numbers if those licensed peace officers elect to restrict access to their information in accordance with section 552.1175(b). If no election is made, the sheriff may not withhold the social security numbers under section 552.1175.

You contend that the remaining information includes Texas motor vehicle record information excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure "information [that] relates to: (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a). We note section 552.130 does not apply to out-of-state motor vehicle record information. *Id.* Although most of the information we have marked pertains to motor vehicle record information issued by an agency of this state, we are unable to determine whether some of the information at issue was also issued by an agency of this state. Accordingly, to the extent the information we have marked pertains to Texas motor vehicle record information, the sheriff must withhold it pursuant to section 552.130 of the Government Code.

We note the remaining information also contains a DD-214 military discharge form. Section 552.140 of the Government Code provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may be disclosed only in accordance with section 552.140 or a court order. *See id.* § 552.140(a), (b). You do not inform us when the sheriff came into possession of the submitted DD-214 form. Therefore, if the submitted DD-214 form came into the possession of the sheriff on or after September 1, 2003, the sheriff must withhold this form in its entirety under section 552.140. Conversely, if the sheriff received the form before September 1, 2003, the sheriff may not withhold the form pursuant to section 552.140.

Finally, section 552.147 of the Government Code states that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Upon review, we agree that the sheriff may withhold any remaining social security numbers of living persons under section 552.147 of the Government Code.⁶

In summary, the department must withhold: (1) the W-4 form 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) the ST-3 accident reports we have marked under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code; (3) the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (4) the L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (5) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (6) the personal information of the named officer and Chief Deputy under section 552.117(a)(2) of the Government Code; however, the sheriff may only withhold the marked cellular telephone and pager number if the named officer paid for the cellular telephone or pager service with his own funds; (7) the social security numbers we have marked under section 552.117(a)(2) of the Government Code, to the extent the individuals at issue are licensed peace officers who are current or former employees of the sheriff; (8) the information we have marked under section 552.1175 of the Government Code, to the extent the marked information belongs to licensed peace officers not employed by the sheriff who elect to restrict access to this information in accordance with section 552.1175(b); (9) the motor vehicle record information we have marked pursuant to section 552.130 of the Government Code, to the extent this information pertains to motor vehicle record information issued by an agency of this state; and (10) the DD-214 form we have marked under section 552.140 of the Government Code, if the sheriff came into the possession of this form on or after September 1, 2003.⁷ The sheriff may withhold any remaining social security numbers of living persons under section 552.147 of the Government Code. The remaining information must be released.

⁶We note that 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.

⁷We 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 a W-4 form under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code, a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code, L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, a Texas driver’s license number and a Texas license plate number under section 552.130 of the Government Code, and a Form DD-214 that is first recorded or first comes into possession of a governmental body on or after September 1, 2003 pursuant to section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/sdk

Ref: ID# 365697

Enc. Submitted documents

c: Requestor
(w/o enclosures)