



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2010

Ms. Myrna S. Reingold  
Galveston County Legal Department  
Galveston County Courthouse  
722 Moody, 5<sup>th</sup> Floor  
Galveston, Texas 77550-2317

OR2010-00237

Dear Ms. Reingold:

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# 364808.

The Galveston County Sheriff's Office (the "sheriff") received a request for information relating to two named peace officers, including personnel and disciplinary records. You inform us that some of the requested information either has been or will be released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.102, 552.114, 552.115, 552.117, 552.1175, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note, and you acknowledge, that the sheriff did not comply with his fifteen-business-day deadline under section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a), (e). The submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your

claims under sections 552.101, 552.102, 552.114, 552.115, 552.117, 552.1175, 552.130, and 552.136 of the Government Code can provide compelling reasons for non-disclosure, we will determine whether the sheriff must withhold any of the submitted information under those exceptions.

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. This exception encompasses information that other statutes make confidential. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). We have marked medical records that must be withheld under section 159.002(b) of the MPA, unless the sheriff receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

Mental health records are confidential under section 611.002 of the Health and Safety Code, which 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.

*Id.* § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; Open Records Decision No. 565 (1990). The sheriff must withhold the mental health record we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045.

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

(a) The [Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”)] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. *A declaration is not public information.*

Occ. Code § 1701.306(a)-(b) (emphasis added). The sheriff must withhold the declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Criminal history record information (“CHRI”) obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.”<sup>1</sup> Gov’t Code § 411.082(2).

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<sup>1</sup>We note that the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov’t Code § 411.082(2).

Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”) and (c)(2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *see generally* Gov’t Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). The sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

The public availability of fingerprints is governed by chapter 560 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 provides that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). The sheriff must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

The sheriff also seeks to withhold some of the submitted information under provisions of chapter 730 of the Transportation Code. Section 730.004 of the Transportation Code provides that “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information means information that identifies a person,” but does not include a person’s zip code. *Id.* § 730.003(6). The Texas Department of Public Safety (the “DPS”) is an “agency” for the purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You indicate that the sheriff obtained some of the submitted information from the DPS in connection with the performance of the sheriff’s governmental functions. *See id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). You state that the sheriff is an authorized recipient of this information for the purposes of chapter 730 of the Transportation Code. We note that an authorized recipient of personal information may not re-disclose the personal information; to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Based on the your representations and our review of the information at issue, we have marked personal information that the sheriff must withhold under

section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses constitutional and common-law rights to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy" pertaining to marriage, procreation, contraception, family relationships, and child rearing and education that have been recognized by the United States Supreme Court. *See Fadlo v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Section 552.102 of the Government Code, which the sheriff also claims, 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). Section 552.102(a) protects information relating to public officials and employees. The privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 and *Industrial Foundation*. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor to Gov't Code § 552.102). Therefore, we will determine whether the sheriff must withhold any of the submitted information on privacy grounds under section 552.101.

Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has concluded that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized

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<sup>2</sup>As we are able to make this determination, we need not address your claims under section 521.052 of the Transportation Code and section 2721 of title 18 of the United States Code.

distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). We also have determined that other types of information 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).

Common-law privacy also encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

You have marked information that the sheriff seeks to withhold on privacy grounds. We conclude that the personal financial information you have marked, as well as the medical, criminal history, and personal financial information we have marked, must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.114 of the Government Code excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). The federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, governs the availability of student records held by educational institutions or agencies receiving federal funds. These provisions only apply to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. 34 C.F.R. § 99.33(a)(2). Although the submitted information includes educational transcripts, these records are maintained by the sheriff, whose office is not an educational institution. You do not inform us that the sheriff received the submitted transcripts from the educational institutions that created them. We therefore conclude that the sheriff may not withhold any of the information in the submitted transcripts on the basis of section 552.114 of the Government Code or FERPA.

Section 552.115 of the Government Code excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because it is maintained by the sheriff,

the submitted birth certificate may not be withheld under section 552.115 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from 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 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Except for the information we have marked that is not protected by section 552.117 and must be released, we agree that the social security numbers and other personal information relating to the named officers that you have marked must be withheld under section 552.117(a)(2). We have marked other information that also must be withheld under this exception.

Section 552.1175 of the Government Code also is applicable to peace officers, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.1175(a)(1). Section 552.1175(b) provides as follows:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(b). You seek to withhold information relating to individuals who are or were employed by other law enforcement agencies. That information must be withheld under section 552.1175 of the Government Code to the extent it is related to peace officers who elect to restrict access to the marked information in accordance with section 552.1175(b).

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 id.* § 552.130(a)(1)-(2). Except for the information we have marked that is not protected by section 552.130 and must be released, we agree that the remaining Texas driver's license and motor vehicle information you have marked must be withheld under section 552.130. We have marked other information that also must be withheld under this exception.

We note that some of the remaining information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the marked medical records must be withheld under section 159.002(b) of the MPA, unless the sheriff receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA; (2) under section 552.101 of the Government Code, the sheriff must withhold the marked mental health record under section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045, the marked declarations under section 1701.306 of the Occupations Code, the marked CHRI under federal law and subchapter F of chapter 411 of the Government Code, the marked fingerprints under section 560.003 of the Government Code, the marked personal information under sections 730.004 and 730.013 of the Transportation Code, and the marked medical, criminal history, and personal financial information under common-law privacy; (3) except for the information we have marked for release, the sheriff must withhold the social security numbers and other personal information relating to the named officers that you have marked, as well as the information we have marked, under section 552.117(a)(2) of the Government Code; (4) the information you have marked that relates to current or former employees of other law enforcement agencies must be withheld under section 552.1175 of the Government Code to the extent that the individuals concerned are peace officers who elect to restrict access to the marked information in accordance with section 552.1175(b); and (5) except for the information we have marked for release, the sheriff must withhold the Texas driver's license and motor vehicle information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.<sup>3</sup> The rest of the submitted information must be released, but any information that is protected by copyright may only

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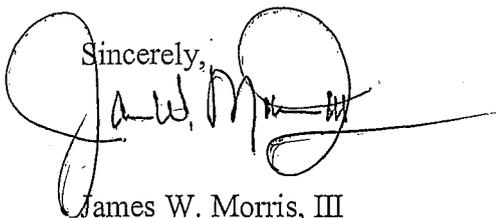
<sup>3</sup>We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision, including a fingerprint under section 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, and a Texas driver's license number, a copy of a Texas driver's license, and a Texas license plate number under section 552.130.

be released in accordance with copyright law.<sup>4</sup> As we are able to make these determinations, we need not address the sheriff's claim under section 552.136 of the Government Code.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 364808

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note that the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.