



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 14, 2010

Sheriff Tom Maddox
Sabine County Sheriff's Office
Sabine County
P.O. Box 848
Hemphill, Texas 75948

OR2010-00734

Dear Sheriff Maddox:

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# 367409.

The Sabine County Sheriff's Office (the "sheriff") received a request for the personnel and internal affairs records of a specified deputy. Although you make no arguments against the disclosure of the submitted information, you ask this office to determine if the information may be released. We have reviewed the submitted information.

Initially, we note the requestor has specifically excluded the specified deputy's social security number, home address, and home telephone number from his request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we must address the sheriff's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information

requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). Documents submitted to this office by the requestor show the sheriff received the request for information on September 10, 2009. Accordingly, the sheriff's ten-day-deadline was September 24, 2009 and the sheriff's fifteen-day-deadline was October 1, 2009. The sheriff did not request a ruling or submit information for our review until November 3, 2009. Consequently, we find the sheriff failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302 of the Government Code); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because you failed to raise any exceptions to disclosure, we will examine the submitted records to determine whether they contain information that is confidential by law.¹

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 section 1701.306 of the Occupations Code, which provides in relevant part:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] 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.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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 the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Therefore, the sheriff must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which 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 [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.

Id. § 1701.454. The F-5 forms in the personnel file do not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff must withhold the F-5 forms we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses medical records, which are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See id.* § 151.001. Section 159.002 of the MPA 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)-(c). This office has concluded the protection afforded by section 159.002 extends only to records created by a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). The personnel file contains records of the diagnosis and treatment of a patient that were created by a physician. Therefore, the sheriff must withhold the documents we have marked under section 552.101 in conjunction with the MPA.

The personnel file contains fingerprints. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which 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). It does not appear section 560.002 permits the disclosure of the fingerprints contained in the personnel file. Therefore, 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 personnel file also contains confidential criminal history record information ("CHRI") which is subject to section 552.101 of the Government Code. 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. *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. Upon review, we find a portion of the submitted information constitutes CHRI generated by the Federal Bureau of Investigation.

We have marked the information the sheriff must withhold pursuant to section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.117(a)(2) exempts 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). Accordingly, the sheriff must withhold the family member information we have marked under section 552.117.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). Therefore, the sheriff must withhold the copy of a Texas driver's license, driver's license numbers, driver's license expiration date, vehicle identification number, and license plate numbers we have marked under section 552.130.

In summary, 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. The sheriff must withhold the F-5 forms we have marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code. The sheriff must withhold the medical records we have marked under section 552.101 in conjunction with the MPA. The sheriff must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code. The sheriff must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. The sheriff must withhold the deputy's family member information we have marked under section 552.117(a)(2). The sheriff must withhold the copy of a Texas driver's license, driver's license numbers, driver's license expiration date, vehicle identification number, and license plate numbers we have marked under section 552.130.² The remaining information must be released.³

²We 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 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 Texas driver's license, and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released contains the social security number of an individual who is not the deputy at issue. 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.

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 367409

Enc. Submitted documents

c: Requestor
(w/o enclosures)