



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2011

Mr. Michael L. Spain  
Fulbright & Jaworski, L.L.P.  
300 Convent Street, Suite 2100  
San Antonio, Texas 78205-3792

OR2011-05816

Dear Mr. Spain:

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# 415889.

The Schertz Police Department (the "department"), which you represent, received a request for the personnel file of a named officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.147 of the Government Code.<sup>1</sup> 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. Section 552.101 encompasses information made confidential by other statutes, such as section 143.089 of the Local Government Code. The application of chapter 143 of the Local Government Code is delineated in section 143.002 of that code, which provides:

(a) This chapter applies only to a municipality:

(1) that:

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<sup>1</sup>We note that the department initially raised section 552.108 of the Government Code but has since withdrawn its claim under that section. Accordingly, we do not address section 552.108.

(A) has a population of 10,000 or more;

(B) has a paid fire department or police department; and

(C) has voted to adopt this chapter or the law codified by this chapter; or

(2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

Loc. Gov't Code § 143.002(a). Thus, chapter 143 of the Local Government Code applies only to civil service municipalities that have voted to adopt the chapter. You claim portions of the submitted personnel records are excepted from disclosure under section 143.089(g). However, you do not inform us that the City of Schertz is a civil service city as defined under chapter 143 of the Local Government Code. Because you have failed to demonstrate that the City of Schertz is a civil service city, we find the department may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 of the Government Code also encompasses title 28, part 20 of the Code of Federal Regulations, which governs the release of criminal history record information ("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 Texas Department of Public Safety ("DPS") maintains, except that 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. Thus, 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. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find a portion of the information at issue constitutes CHRI. We have marked the information the department must withhold pursuant to section 552.101 in conjunction with section 411.083 of the Government Code and federal law. However, none of the remaining information you have marked with purple flags constitutes CHRI, and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the release of the submitted F-5 form. Section 1701.454 provides as follows:

(a) A report or statement submitted to the [Texas Commission on Law Enforcement Officer Standards and Education ("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 section, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the [TCLEOSE] employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. Section 1701.454 applies to F-5 forms required to be filed with TCLEOSE under subchapter J of chapter 1701. Upon review, the department must withhold the submitted F-5 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.<sup>2</sup>

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

(a) The [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of the submitted F-5 form.

(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 the commission. A declaration is not public information.

*Id.* § 1701.306(a), (b). Upon review, we find the department must withhold the L-2 and L-3 declaration forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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 Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* This office also has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy).* We note information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of public employee's resignation or termination).* Upon review, we find portions of the submitted information are highly intimate

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of the submitted L-2 and L-3 declaration forms.

or embarrassing and not of legitimate public concern. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup>

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). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code. However, none of the remaining information at issue is excepted under section 552.102(a). Accordingly, the department may not withhold any of the remaining information on that basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You inform us that the officer at issue is a peace officer as defined in article 2.12. We note that some of the information you marked in red is not the type of information protected under section 552.117 of the Government Code. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you have marked in red, as well as the additional information we have marked, under section 552.117(a)(2).<sup>5</sup>

We note that the submitted information may include information subject to section 552.1175 of the Government Code, which provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against the disclosure of portions of this information.

<sup>5</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure. We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes a governmental body to withhold the home addresses and telephone numbers, personal pager and cellular telephone numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision.

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(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(a), (b). We have marked addresses and telephone numbers that may be the home addresses of licensed peace officers not employed by the department. The department must only withhold the information we marked if it consists of the home addresses and telephone numbers of licensed peace officers and the peace officer elects to restrict access to the information pertaining to them in accordance with section 552.1175(b). If the information does not consist of the home addresses and telephone numbers of peace officers not employed by the department or no elections are made, the department may not withhold the information we have marked under section 552.1175.

Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. *See id.* § 552.130(a)(1), (2). We note that some of the information you marked in orange is not the type of information that is excepted under section 552.130. Upon review, except for the information we have marked for release, we find the department must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code 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); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the department must withhold the bank account numbers that you have marked and the insurance policy number we have marked in the remaining information under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a).

Upon review, we find the department may withhold the social security numbers you have marked in the remaining information under section 552.147 of the Government Code.<sup>6</sup>

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The department must withhold the marked F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code and the marked L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102(a) of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you have marked in red, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code. The department must withhold the information we marked under section 552.1175 of the Government Code, if it consists of the home addresses and telephone numbers of licensed peace officers and the peace officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. Except for the information we have marked for release, the department must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The department must also withhold the information you have marked, as well as the additional information we have marked, in the remaining information under section 552.136 of the Government Code.<sup>7</sup> The department may withhold the social security numbers you have marked in the remaining information under section 552.147 of the Government Code. The remaining information must be released.

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

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<sup>6</sup>We 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.

<sup>7</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including L-2 and L-3 declarations under section 552.101 of the Government Code 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 bank account number and insurance policy number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/tf

Ref: ID# 415889

Enc. Submitted documents

c: Requestor  
(w/o enclosures)