



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 1, 2013

Ms. Crystal Koonce  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2013-05148

Dear Ms. Koonce:

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# 482934.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for the application, physical, written and shooting tests, and background check pertaining to a named applicant to the sheriff's office, excluding social security numbers, driver's license numbers, and L-2 and L-3 forms. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.122, 552.130, 552.136, 552.137, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor specifically excludes social security numbers and driver's license numbers from the scope of the request. Accordingly, these types of information are not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information to the requestor.

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 laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information

Center or by 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.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 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). 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. We note driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). Upon review, we find the information we have marked constitutes confidential CHRI, which the sheriff’s office must withhold under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. However, none of the remaining information you have marked consists of CHRI for purposes of chapter 411, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See id.* §§ 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 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). We have marked fingerprints in the remaining information. You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information in this instance. Therefore, the sheriff’s office 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. However, the remaining information at issue does not consist of fingerprint information for the purposes of chapter 560. Therefore, none of the remaining information at issue is confidential under section 560.003, and the sheriff’s office may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its

release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See 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).* Additionally, 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. *See Open Records Decision Nos. 600 (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 455 at 9 (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow).* However, we note there is a legitimate public interest in an applicant's background and qualifications for government employment, especially where the applicant was seeking a position in law enforcement. *See Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and 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.*

Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.<sup>1</sup> However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate concern to the public. Consequently, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code is applicable to information related to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See Gov't Code § 552.1175(a)(1).* Section 552.1175(b) provides as follows:

---

<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(b) Information that relates to the home address, home telephone number, emergency contact information, 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). Section 552.1175(b) applies to the personal cellular telephone number of an individual who falls within the scope of subsection 552.1175(a), provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We note a post office box number is not a "home address" for purposes of section 552.1175. *See* Open Records Decision No. 622 at 6 (1994). You inform us, and provide documentation showing, that the submitted information pertains to a peace officer in another city's police department. You have also submitted an election form in which the officer chose to restrict public access to the information at issue. Therefore, the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code. The remaining information at issue is not subject to section 552.1175 and may not be withheld on that basis.

Section 552.122 of the Government Code excepts from public disclosure "[a] test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold the sheriff's office's Training Division Entrance Exam under section 552.122 of the Government Code. You explain the exam tests individuals who apply for a deputy position with the sheriff's office. We understand the exam is used on a continuing basis and release of this information would compromise the effectiveness of future exams. Having reviewed the submitted information and your arguments, we find the

information we have marked consists of “test items” for purposes of section 552.122(b), and the answers reveal the questions themselves. Therefore, we conclude the sheriff’s office may withhold the information we have marked under section 552.122 of the Government Code. We note the remaining information you seek to withhold under section 552.122 consists of multiple choice scantron sheets that do not reveal any test questions. Therefore, the remaining information you have marked under section 552.122 may not be withheld on that basis.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]” Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the sheriff’s office must withhold the responsive information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states “[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”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Therefore, the sheriff’s office must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code 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). *Id.* § 552.137(a)-(c). The e-mail addresses you have marked are not excepted by subsection (c). Accordingly, the sheriff’s office must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release. *See id.* § 552.137(b).

Section 552.140 of the Government Code provides 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 only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). We have marked a DD-214 form. We note the sheriff’s office came into possession of this form after September 1, 2003. Thus, the sheriff’s office must withhold the form we have marked under section 552.140 of the Government Code.

In summary, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) federal law and chapter 411

of the Government Code, (2) section 560.003 of the Government Code, and (3) common-law privacy. The sheriff's office must also withhold the information we have marked under sections 552.1175, 552.122, 552.130, and 552.140 of the Government Code and the information you have marked under sections 552.136 and 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.<sup>2</sup> The remaining responsive 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 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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 482934

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code; e-mail addresses of members of the public under section 552.137 of the Government Code; and a military discharge record under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.