



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2014

Ms. Tiffany Bull
Assistant City Attorney
City of Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2014-03081

Dear Ms. Bull:

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# 514475 (Arlington PD Nos. 13543, 13677).

The Arlington Police Department (the "department") received two requests for the personnel file of a named employee. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 552.101 encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See* Transp. Code § 550.065. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident;

¹Although you raise section 552.1175 for portions of the submitted information, we note the correct exception to raise for information pertaining to an officer employed by the department that is held in an employment capacity is section 552.117.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

and (3) specific location of the accident. *Id.* § 550.065(c)(4). The submitted information includes an ST-3 accident report, which we have marked, that was completed pursuant to chapter 550 of the Transportation Code. The requestor has not provided the department with the requisite pieces of information specified by the statute. Accordingly, the department must withhold the submitted ST-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses section 730.004 of the Transportation Code, which provides that “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” *Id.* § 730.004. “Personal information” includes a person’s name, address, and driver identification number, but not the zip code. *Id.* § 730.003(6). The Department of Public Safety (the “DPS”) is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You state the submitted information was obtained by the department from the DPS for use by the department in carrying out its governmental functions. *See id.* § 730.007(a)(2)(A)(I) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, we find the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code.

Section 552.101 also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See Occ. Code* §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by

either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we have marked constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created by a physician. Accordingly, the department must withhold the marked medical record under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which pertains to an L-2 Declaration of Medical Condition form and an L-3 Declaration of Psychological and Emotional Health form required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). Former section 1701.306 provides, in part:

(a) [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.

Act of May 17, 1999, 76th Leg., R.S., ch. 3888, § 1, 1999 Tex. Gen. Laws 1431, 2219 (current version at Occ. Code §§ 1701.306(a), (b)). Upon review, we find the L-2 and L-3 declaration forms we have marked must be withheld under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code.³

Section 552.101 of the Government Code also 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. Title 28, part 20 of the Code of Federal Regulations governs the release of

³We note the L-2 and L-3 declaration forms at issue were created prior to September 1, 2011. Although section 1701.306 of the Occupations Code was amended in 2011 by the 82nd Legislature, L-2 and L-3 declaration forms created prior to September 1, 2011 are subject to the former version of section 1701.306, which was continued in effect for that purpose.

CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the DPS maintains, except 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). You state some of the enclosed records consist of CHRI. Based on your representation and our review, we find the submitted information contains information that constitutes CHRI. Accordingly, 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. However, you have failed to demonstrate the remaining information consists of CHRI for section 411.083 purposes; thus, none of the remaining information may be withheld under section 552.101 in conjunction with section 411.083 and federal law.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Moreover, this office has determined personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 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, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542, 470 at 4 (1987) (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 or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in

conjunction with common-law privacy.⁴ However, you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest; thus, the department may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.102 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 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.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the information we have marked is confidential under section 552.102(a) of the Government Code based on the Texas Supreme Court’s ruling in *Tex. Comptroller of Pub. Accounts*. Accordingly, the department must withhold the information we have marked under section 552.102(a) of the Government Code. However, you have failed to demonstrate the remaining information at issue is subject to section 552.102(a); thus, the department may not withhold any of the remaining information under section 552.102(a).

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. You state and provide documentation showing, the individual at issue is a currently licensed peace officer. Accordingly, the department must withhold the information we have marked under section 552.117(a)(2).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁵

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with each of the

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

following laws: (1) section 550.065 of the Transportation Code; (2) section 730.004 of the Transportation Code; (3) the MPA; (4) former section 1701.306 of the Occupations Code; (5) section 411.083 of the Government Code; and (6) common-law privacy. The department must also withhold the information we have marked under section 552.102(a) of the Government Code. Additionally, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. Finally, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 514475

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)