



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2014

Ms. Janet L. Kellogg
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2014-22253

Dear Ms. Kellogg:

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# 546965 (City File No. 949).

The City of Corpus Christi (the "city") received a request for the personnel file of a city employee. You state you have released some responsive information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "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). Part 20 of title 28 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). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. However, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find you have failed to demonstrate how any portion of the submitted information constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the federal Fair Credit Reporting Act (the "FCRA"), 15 U.S.C. § 1681 *et seq.* Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See id.* § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining "person" and "consumer report"). A criminal history report compiled by a private consumer reporting agency is a "consumer report" under the FCRA. *See id.* § 1681a(d) (defining "consumer report"); *see also* www.ftc.gov/bcp/online/pubs/buspubs/credempl.shtm (discussing Federal Trade Commission position that "consumer report" includes criminal histories). Section 1681b further provides "[a] person shall not use or obtain a consumer report for any purpose unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification." *Id.* § 1681b(f). Section 1681e provides for the maintenance of procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See id.* § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (stating that federal law strictly limits distribution of consumer credit reports by credit reporting agencies). You state the submitted information contains a consumer report furnished to the city by a consumer agency for purposes of section 1681b of the FCRA. We note the FCRA does not permit the disclosure of information in a consumer report for the purpose of responding to a request for information under the Act. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FCRA.

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code. 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.

Occ. Code § 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).* Some of the submitted information consists of reports of the results of a drug test. We note section 159.001 of the MPA defines "patient" as "a person who, to receive medical care, consults with or is seen by a physician." *Id.* § 159.001(3). Because the individual at issue did not receive medical care in the administration of the drug test, this individual is not a patient for purposes of section 159.002. Furthermore, we find you have failed to demonstrate any of the submitted information consists of a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created by a physician or someone under the supervision of a physician. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the MPA.

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 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). Therefore, the city must withhold the information you have marked, as well as the information we have marked, under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.

Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You state the employee whose information is at issue has elected, prior to the city's receipt of the request, to keep her social security number confidential. Accordingly, the city must withhold the employee's social security number, which we have marked, under section 552.117(a)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, 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. *See* Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code.¹

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release. *See id.* § 552.130(a)(1)-(2). The city must withhold the motor vehicle record information you have marked, as well as the motor vehicle record information we have marked, under section 552.130 of the Government Code.

Section 552.137 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). *See id.* § 552.137(a)-(c). The e-mail address you have marked is not excluded by subsection (c). Furthermore, you state its owner has not affirmatively consented to its public disclosure. Therefore, the city must withhold the e-mail address you have marked under section 552.137 of the Government Code.

In summary, the city must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with the FCRA; (2) the information you have marked, as well as the information we have marked, under section 552.102(a) of the Government Code; (3) the information we have marked under section 552.117(a)(1) of the Government Code; (4) the information we have marked under section 552.117(a)(2) of the Government Code; (5) the motor vehicle record information you have marked, as well as the motor vehicle record information we have marked, under section 552.130 of the

¹As our ruling is dispositive, we do not address your argument to withhold this information.

Government Code; and (6) the e-mail address you have marked under section 552.137 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 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 546965

Enc. Submitted documents

c: Requestor
(w/o enclosures)