



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2015

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 North Riverfront Boulevard, LB-31
Dallas, Texas 75207-4313

OR2015-11886

Dear Ms. Lutton:

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# 568164.

The Dallas County Sheriff's Department (the "department") received a request for "all documents, including interview notes, that were considered and formed part of the decision to disqualify" the requestor's client from a position of employment with the department. You inform us the department will release certain information to the requestor with redactions. You claim the remaining submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have marked certain information that you state will be redacted from a document that will be released to the requestor. The information at issue consists of the requestor's client's social security number, contact number, date of birth, and personal e-mail address. We note that although governmental bodies are authorized to withhold social security numbers under section 552.147 of the Government Code without seeking a ruling from this office, this provision protects personal privacy. *See* Gov't Code § 552.147(b). Therefore, the requestor has a right of access to his client's social security number under section 552.023 of the Government Code, and it may not be withheld from him under section 552.147. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered

confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). In addition, although e-mail addresses of members of the public are excepted from disclosure under section 552.137 of the Government Code, and may be withheld from disclosure by governmental bodies without seeking a ruling from this office,¹ the requestor has a right of access to his client's e-mail address under section 552.137(b) of the Government Code. *See id.* § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). Accordingly, this information may not be withheld from the requestor under section 552.137, and must be released. Finally, you do not inform us of any provision of law, nor are we aware of any, that would permit the department to withhold the date of birth and contact number of the requestor's client from the requestor in this instance. Thus, this information must also be released. We will next address your arguments against disclosure of the remaining 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 of the Government Code encompasses section 1701.306 of the Occupations Code, which makes confidential the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement ("TCOLE"). Section 1701.306 provides:

(a) [TCOLE] may not issue a license to a person 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 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 [TCOLE]. A declaration is not public information.

¹*See* Open Records Decision No. 684 (2009) (authorizing governmental bodies to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision).

Occ. Code § 1701.306(a)-(b). You seek to withhold the remaining submitted information under section 1701.306(b). Upon review of the submitted information, however, we find the information does not consist of L-2 Declaration of Medical Condition or L-3 Declaration of Psychological and Emotional Health forms. Accordingly, section 1701.306 of the Occupations Code is not applicable to the submitted information, and the department may not withhold this information under section 552.101 on that basis.²

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code. Section 611.002 governs the public availability of mental health records and provides:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find the information we marked under section 611.002 consists of mental health records or information obtained from such records. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. However, we find none of the remaining information constitutes mental health records or information obtained from mental health records for the purposes of section 611.002 of the Health and Safety Code. Thus, no portion of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The remaining submitted information must be released to the requestor.

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,

²As we are able to make this determination, we need not address your additional argument that section 1701.306 of the Occupations Code removes a portion of the submitted information from the scope of the Act.

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,

A handwritten signature in cursive script, appearing to read "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/eb

Ref: ID# 568164

Enc. Submitted documents

c: Requestor
(w/o enclosures)