



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1996

Mr. Joe C. Tooley
McCauley, McDonald, Love and Devin
3800 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2014

OR96-2406

Dear Mr. Tooley:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36695.

The Collin County Sheriff's Office and Collin County have each received a request for information concerning a former police officer. Specifically, the requestor seeks the following information:

1. All documents and information relating to disciplinary actions (both positive and negative) that has been taken by the Collin County Sheriff's Office against Sheriff Deputy Stuart Joynt, including but not limited to the dates of such disciplinary action; and the action taken,
2. All documents relating to the final determination of all complaints and any disciplinary action taken against Sheriff Deputy Stuart Joynt,
3. Any information relating to the reasons for Stuart Joynt's termination or resignation from the Sheriff's Office.

You assert that the requested information is excepted from required public disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.

Section 552.117(2) excepts from required public disclosure information relating to the home address, home telephone number, and social security number of a "peace officer" as defined by article 2.12 of the Code of Criminal Procedure, as well as whether the peace officer has family members. If a person was a "peace officer" at the time the

request for information was received, this information must be withheld under section 552.117(2). Section 552.117(1) also excepts from required public disclosure this information as it relates to employees and former employees of a governmental body, so long as the employees have elected to keep this information confidential in compliance with section 552.024. See Open Records Decision No. 530 (1989) (employee must make election prior to receipt of open records request). If these employees were not "peace officers" at the time the request for information was received, this information must be withheld only if the former peace officers made the election under section 552.024 to keep the information confidential.¹ We have marked 552.117(2) information that appears to be related to "peace officers."

You also assert that section 552.101 excepts some of the information from public disclosure. 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 incorporates the doctrine of common-law privacy. The test for common-law privacy under section 552.101 is set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court recognized a common-law right of privacy in information which is highly intimate and embarrassing to a reasonable person and of no legitimate concern to the public. This office has previously held that a common-law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. See Open Records Decision Nos. 438 (1986), 219 (1978), 230 (1979). We have reviewed the records and have found no information that must be withheld under section 552.101 and the common-law right to privacy.

The records at issue also contain information obtained from a polygraph test which must be withheld under section 552.101. Section 552.101 also encompasses information made confidential by statute. Information pertaining to a polygraph examination is confidential under section 19A(b) of article 4413 (29cc), V.T.C.S. Accordingly, you must withhold the polygraph examination and any information acquired from the examination under section 552.101 of the Government Code in conjunction with V.T.C.S., article 4413(29cc), section 19A(b). We have marked the examination and other information that must be withheld under section 552.101.

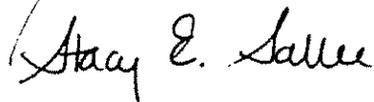
You also raise section 552.108, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime." and "[a]n internal record or notation of a law enforcement agency

¹We note that even if this information is not protected by section 552.117, federal law may prohibit disclosure of this employee's social security number. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).

or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). However, where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Thus, section 552.108 is generally inapplicable to the documents at issue. However, this office has held that the cellular telephone numbers of employees with specific law enforcement responsibilities may be withheld under section 552.108. *See* Open Records Decision No. 506 (1988). Therefore, you may withhold the cellular and pager phone numbers of any undercover officer under section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/SAB/cbh

Enclosures: Marked documents

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(w/o enclosures)