



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2005

Ms. Julie Joe
Assistant County Attorney
City of Austin
P.O. Box 1748
Austin, Texas 78767-1748

OR2005-10522

Dear Ms. Joe:

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# 236588.

The Travis County Sheriff's Office (the "sheriff's office") received a request for letters, reports, memorandum or documents relating to the income of a named officer, the officer's performance evaluations, and any complaints or investigations regarding that officer. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note that you also raised sections 552.108, 552.136, and 552.137 as exceptions to disclosure. However, you did not submit any arguments in support of these claims. Thus, the sheriff's office has waived its claim under section 552.108. See Gov't Code 552.301(e)(governmental body must provide arguments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision No. 665 at 2 n. 5 (2000)(discretionary exceptions in general). Further, the sheriff's office has not demonstrated that any of the information is confidential for the purposes of section 552.136 or 552.137. See Gov't Code §§ 552.301, .302.

²We assume that 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.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Further, when a law enforcement agency is asked to compile a particular individual’s criminal history information, the compiled information takes on a character that implicates the individual’s right to privacy in a manner that the same information in an uncompiled state does not. *See U. S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). However, information that refers to an individual solely as a victim, witness, or involved person is not private under *Reporters Committee* and may not be withheld under section 552.101 on that basis.

You argue that the request for “all complaints filed against [the named officer] and any investigations conducted by the [s]heriff’s [o]ffice regarding the named [officer]” implicates this individual’s right to privacy. We note, however, that because internal affairs investigations are administrative in nature and not criminal, a request for this information does not implicate the privacy concerns expressed in *Reporters Committee*. However, the submitted information contains criminal history record information belonging to a member of the public that is confidential under section 552.101. We have marked this information along with other information which the sheriff’s office must withhold pursuant to section 552.101 in conjunction with common-law privacy.

The sheriff’s office argues that the submitted F-5 forms (Report of Separation of License Holder) and L-1 forms (Report of Appointment/License Application) are confidential under section 552.101 in conjunction with section 1701.454 of the Occupations Code. Section 1701.454 provides as follows:

- (a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
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(b) Except as provided by this section, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the commission employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. After reviewing the submitted information, we conclude that the sheriff's office must withhold the F-5 forms pursuant to section 552.101 in conjunction with section 1701.454. Although you have also marked L-1 forms to withhold on this basis, we note that L-1 forms are not made confidential by section 1701.454 and therefore may not be withheld under section 552.101 on that basis.

You assert that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts the home address and telephone number, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer made an election under section 552.024. Gov't Code § 552.117(a)(2); *see* Open Records Decision No. 622 (1994). We note that a post office box number is not a "home address" for purposes of section 552.117.³ Accordingly, we conclude that the sheriff's office must withhold the information you have marked under section 552.117(a)(2).⁴

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state.

³*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home) (*citing* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

⁴We note that a few items you have marked must be released. Where this occurs, we have noted that the item cannot be withheld. Information marked as such must be released.

Gov't Code § 552.130. Accordingly, the sheriff's office must withhold Texas motor vehicle record information you have marked along with the information we have marked pursuant to section 552.130.

The submitted information also contains social security numbers belonging to members of the public. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.⁵ Gov. Code § 552.147. Therefore, the sheriff's office must withhold the social security numbers contained in the submitted information under section 552.147.⁶

In summary, you must withhold the information marked under section 552.101 of the Government Code in connection with common-law privacy, as well as any F-5 forms under section 552.101 in connection with section 1701.454 of the Occupation Code. You must also withhold the information marked pursuant to sections 552.117, 552.130, and 552.147 of the Government Code. All of the remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

⁵Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

⁶We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/jh

Ref: ID# 236588

Enc. Submitted documents

c: Ms. Gabriella C. Young
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(w/o enclosures)