



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 5, 2008

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2008-03007

Dear Ms. Lentz:

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# 305241.

The Williamson County Sheriff's Office (the "sheriff") received a request for information pertaining to background investigations by the sheriff of the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.122, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 other statutes. Section 1701.452 of the Occupations Code requires that a law enforcement agency submit a report to the Texas Commission on Law Enforcement Officer Standards and Education (the "commission") regarding an officer licensed under chapter 1701 who resigns or is terminated by a law enforcement agency. *See* Occ. Code § 1701.452. Section 1701.454 makes such reports, which are commonly referred to as "F-5's," confidential and provides in relevant part the following:

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 instances of excessive force or violations of the law other than traffic offenses.

*Id.* § 1701.454(a) (emphasis added). We agree that the submitted F-5 forms are confidential under section 1701.454; therefore, the sheriff must withhold this information, which we have marked, under section 552.101 of the Government Code. However, you have not established that the remaining documents at issue, including the Employment History Records Release form, consist of reports or statements submitted to the commission under subchapter J of chapter 1701. *See id.* §§ 1701.451(a)(2)(B), 1702.452(b), 1701.454(a). Therefore, the sheriff may not withhold any of the remaining information under section 552.101 in conjunction with section 1701.454.

Section 552.101 also encompasses section 1701.306 of the Occupations Code. Section 1701.306 pertains to L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms, which are required by the Texas Commission on Law Enforcement Officer Standards and Education (the "commission"). This section provides in relevant part as follows:

(a) The commission 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 the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). The information you have marked under section 1701.306 does not consist of a declaration that is confidential under section 1701.306; therefore, the sheriff may not withhold this information under section 552.101 on that ground.

Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center is confidential under federal and

state law, which is encompassed by section 552.101. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and . Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. See ORD 565 at 10-12; see generally Gov't Code ch. 411 subch. F. 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 a criminal justice purpose. See *id.* § 411.089(b). We have marked CHRI that the sheriff must withhold under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.<sup>1</sup>

Section 552.101 also encompasses section 58.007 of the Family Code. Section 58.007 makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. You assert that an offense report in the submitted documents is confidential under section 58.007; however, this report is from 1994. Accordingly, as the report does not consist of a juvenile law enforcement record relating to conduct that occurred on or after September 1, 1997, this report is not confidential under section 58.007. However, former section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records prior to its repeal by the Seventy-fourth Legislature. Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14(d) provides the following:

Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and

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<sup>1</sup>We note that the requestor can obtain her own CHRI from DPS. Gov't Code § 411.083(b)(3).

(3) law-enforcement officers when necessary for the discharge of their official duties.

The submitted offense report concerns juvenile conduct that occurred prior to January 1, 1996, and the requestor does not appear to have a right of access to this information. Therefore, this report, which we have marked, is confidential under the former section 51.14(d) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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 types 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. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In Open Records Decision No. 169 (1977), this office also recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 in conjunction with common-law privacy on a showing of "special circumstances." This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." ORD 169 at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

The sheriff states that the release of the information identifying undercover peace officers would put these officers' lives at risk. Based on this representation, and our review, we find that the sheriff must withhold the information identifying undercover peace officers that you have marked under section 552.101 on the basis of common-law privacy and special circumstances. We also agree that some of the remaining information, which we have marked, is confidential under common-law privacy and must be withheld under section 552.101. But the remaining information is either not highly intimate or embarrassing, or the requestor has a right of access to it pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to

information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the remaining information is not confidential under common-law privacy, and the sheriff may not withhold it under section 552.101 on that ground.

You assert that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Section 552.117(a)(2) excepts from disclosure this same information regarding a peace officer, as defined by article 2.12 of the Texas Code of Criminal Procedure, regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential. We have marked information pertaining to sheriff deputies that must be withheld under section 552.117(a)(2) of the Government Code. However, the remaining information at issue does not pertain to deputies or other employees of the sheriff; therefore, the sheriff may not withhold any of the remaining information under section 552.117(a)(1) or 552.117(a)(2) of the Government Code.

You assert that some of the information at issue may be excepted under section 552.1175 of the Government Code, which provides in part the following:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The submitted documents contain information that appears to pertain to officers who do not work for the sheriff. Thus, the sheriff must withhold the information we have marked under section 552.1175 if these individuals are currently licensed peace officers who elect to restrict access to this information in accordance with

section 552.1175(b); however, the sheriff may only withhold the addresses and telephone numbers marked under section 552.1175 if these are the home addresses and telephone numbers of the officers at issue. The remaining information is not encompassed by section 552.1175; therefore, the sheriff may not withhold the remaining information on that ground.

You assert that some of the submitted information, which consists of math, spelling, and grammar tests, is excepted under section 552.122 of the Government Code. Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. ORD 626 at 6. Having reviewed the information at issue, we agree that the information at issue consists of test items for purposes of section 552.122(b); therefore, you may withhold this information, which we have marked, under section 552.122.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The sheriff must withhold the Texas motor vehicle record information we have marked under section 552.130. The remaining information either does not consist of Texas motor vehicle record information or it is information to which the requestor has a right of access under section 552.023 of the Government Code. Therefore, the sheriff may not withhold the remaining information on that ground.

You assert that some of the remaining information is excepted under section 552.137 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 Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, we agree that the sheriff must withhold the e-mail addresses you have marked under section 552.137, except for the address that we have marked for release.

Finally, you assert that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. We agree that the sheriff may withhold the social security number marked under section 552.147.<sup>2</sup>

To conclude, the sheriff must withhold the following: (1) the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code and federal law; (2) the offense report marked under section 552.101 in conjunction with the former section 51.14 of the Family Code; (3) the information identifying undercover peace officers that you have marked, as well as the additional information that we have marked, under section 552.101 in conjunction with common-law privacy; (4) the information we have marked under section 552.117(a)(2) of the Government Code; (5) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; and (6) the information marked under section 552.137 of the Government Code, except for the information that we have marked for release.<sup>3</sup> The sheriff must also withhold the information we have marked under section 552.1175 of the Government Code if the individuals at issue are currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b); however, the sheriff may only withhold the addresses and telephone numbers marked under section 552.1175 if these are the home addresses and telephone numbers of the officers at issue. The sheriff may withhold the information we have marked under section 552.122 of the Government Code and the social security number marked under section 552.147 of the Government Code. The sheriff release the remaining information.<sup>4</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of

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<sup>2</sup>We 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.

<sup>3</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

<sup>4</sup>We note that the requestor has a right of access to information in the submitted documents that otherwise would be excepted from release under the Act. *See* Gov’t Code § 552.023(a); ORD No. 481 at 4. Thus, the sheriff must again seek a decision from this office if it receives a request for this information from a different requestor.

such a challenge, 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).

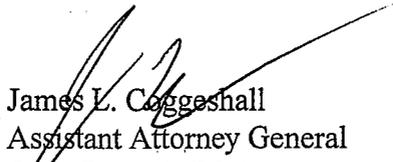
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 305241

Enc. Submitted documents

c: Ms. Julie Koch  
206 Rim Rock  
Leander, Texas 78641  
(w/o enclosures)

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