



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2009

Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County Attorney  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

OR2009-01333

Dear Ms. Rangel:

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# 333726.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for the personnel file of a named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 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 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 also encompasses federal law. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274(1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return . . . or the determination of the existence, or possible existence, of liability . . . for any tax, . . . penalty, . . . , or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by

the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer's designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(i) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under the federal Freedom of Information Act). Section 6103(c) provides that, unless the Secretary of Treasury determines that disclosure would seriously impair tax administration, tax record information may be released to any person or persons as the taxpayer may designate in a consent to such disclosure. *See* 26 U.S.C. § 6103(c). We note that the requestor has submitted a consent to release form signed by the individual whose tax information is at issue. Therefore, pursuant to section 6103(c) of title 26 of the United States Code, the sheriff must release the submitted W-4 forms to the requestor, if the Secretary of Treasury determines that such disclosure would not seriously impair federal tax administration. Otherwise, the submitted W-4 forms must be withheld under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

The submitted information also contains L-2 Declaration of Medical Condition forms and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides as follows:

(a) [TCLEOSE] 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 [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Upon review, the sheriff must withhold the L-2 and L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 also encompasses section 1701.454 of the Occupations Code. Section 1701.454 of the Occupation Code governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") and provides as follows:

(a) A report or statement submitted to the [TCLEOSE] 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.

(b) Except as provided by this section, a [TCLEOSE] 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 [TCLEOSE] 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. The submitted information includes Reports of Separation of License Holder ("F-5") as required to be submitted to TCLEOSE by a law enforcement agency under subchapter J of chapter 1701 of the Occupations Code. In this instance, it does not appear

that the named officer resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Accordingly, the sheriff must withhold the F-5 forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Because there is a legitimate public interest in the qualifications and job performance of public employees, the department may not withhold this information from disclosure based on a right of privacy. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow). In addition, this office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). Further, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. However, as noted above, the requestor has submitted a consent to release form signed by the named officer in which the named officer authorizes the requestor to obtain information pertaining to him. Thus, the requestor is the authorized representative of the individual whose privacy interests are at issue. Section 552.023 of the Government Code gives an individual's authorized representative a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of the information. *See* Gov't Code § 552.023. Accordingly, in this instance, the requestor has a special right of access to the named officer's private information, and the sheriff may not withhold that information under section 552.101 in conjunction with common-law privacy. *See id.*; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself).

You assert that some of the remaining information is excepted from disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from required public disclosure the current and former home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). However, section 552.117 protects personal privacy and, as noted above, the requestor is the authorized representative of the officer at issue. Thus, the requestor has a right of access under section 552.023 of the Government Code to any personal information relating to the officer that the sheriff would otherwise be required to withhold from the public under section 552.117(a)(2). *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, the sheriff may not withhold any of the submitted information pertaining to the named police officer under section 552.117(a)(2).<sup>1</sup> However, the submitted information lists other individuals as officers employed by the sheriff. You do not indicate which of these individuals are currently licensed peace officers. Accordingly, if the individuals, other than the named officer, listed in the submitted information are currently licensed peace officers, the sheriff must withhold the information we have marked under section 552.117(a)(2).<sup>2</sup>

To the extent that these individuals other than the named officer are not currently licensed peace officers, section 552.117(a)(1) may apply. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and home telephone numbers, social security numbers, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. 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). Therefore, the sheriff may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have not informed us whether the individuals other than the named officer have made timely elections for confidentiality under section 552.024. Accordingly, if these individuals timely elected to keep their personal information confidential, the sheriff must withhold the marked information under section 552.117(a)(1).

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<sup>1</sup>We note that, if the officer at issue is not a currently license police officer under section 2.12 of the Code of Criminal Procedure, the requestor would likewise have a right of access pursuant to section 552.023 of the Government Code to any information the sheriff would otherwise be required to withhold from the public under section 552.117(a)(1) of the Government Code.

<sup>2</sup>We note that in Open Records Decision No. 670 (2001), the attorney general determined that all governmental bodies may withhold information that reveals a peace officer's home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the individual has family members without the necessity of requesting an attorney general decision as to whether the exception under section 552.117(a)(2) applies.

The sheriff may not withhold the marked information under section 552.117(a)(1) if these individuals did not make a timely election to keep this information confidential.<sup>3</sup>

Section 552.130 of the Government Code exempts from disclosure information that relates to “a motor vehicle operator’s or driver’s license [or] motor vehicle title or registration issued by an agency of this state.” *Id.* § 552.130(a)(1), (2). However, the submitted Texas motor vehicle information pertains only to the named officer. We note that the purpose of section 552.130 is to protect the privacy interests of individuals. Thus, as the named officer’s authorized representative, the requestor has a right of access to his Texas motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b). Accordingly, the sheriff may not withhold any of the submitted information under section 552.130 of the Government Code.

You assert that the submitted information contains insurance policy numbers, bank account numbers, and credit card numbers that are subject to section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). However, the submitted account information pertains solely to the named officer. We note that section 552.136 also protects privacy interests; thus, as the named officer’s authorized representative, the requestor has a right of access to this information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b). Accordingly, the sheriff may not withhold any of the submitted information under section 552.136 of the Government Code.

In summary, pursuant to section 6103(c) of title 26 of the United States Code, the sheriff must release the submitted W-4 forms to the requestor if the Secretary of Treasury determines that such disclosure would not seriously impair federal tax administration. Otherwise, the submitted W-4 forms must be withheld under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. The sheriff must withhold, under section 552.101 of the Government Code, the marked L-2 and L-3 forms in conjunction with section 1701.306 of the Occupations Code and the marked F-5 forms in conjunction with 1701.454 of the Occupations Code. If the individuals other than the named officer are currently licensed peace officers, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individuals other than the named officer are not currently licensed police officers, the sheriff must withhold the information we have marked under section 552.117(a)(1) for each

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<sup>3</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.

individual who made a timely election to withhold personal information under section 552.024. The remaining information must be released to the requestor.<sup>4</sup>

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](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 333726

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); ORD 481 at 4. However, if the sheriff receives another request for this particular information from a different requestor, then the sheriff should again seek a decision from this office.