



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2009

Ms. Heather Stebbins
Assistant City Attorney
City of Kerrville
800 Junction Highway
Kerrville, Texas 78028

OR2009-05720

Dear Ms. Stebbins:

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# 341529.

The Kerrville Police Department (the "department") received a request for information pertaining to a named police officer. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note the requestor has excluded from his request five types of information pertaining to the named police officer: (1) health; (2) use of insurance; (3) use of sick leave; (4) social security number; and (5) family member information. The requestor has also excluded the named police officer's address and telephone number, if the named police officer requested they be withheld from disclosure. Accordingly, any such information in the requested information, some of which you have redacted, is not responsive to the present

¹We 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.

request for information.² The department need not release non-responsive information and this ruling will not address it. We have marked the remaining non-responsive information in the submitted documents.

Next, we note you have redacted other portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, you have been authorized to withhold the remaining redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision 673 (2000). Thus, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the remaining redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the department should refrain from redacting any information it submits to this office in seeking an open records ruling. An unauthorized redaction may result in a determination that the information must be released. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, while section 552.102(a) excepts from public disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the common-law privacy test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). Accordingly, we will consider your section 552.101 and section 552.102(a) privacy claims together for the submitted information.

²We 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.

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also found there is a legitimate public interest in the qualifications of a public employee and how that employee performs job functions and satisfies employment conditions. *See generally* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow).

Upon review, we find that the personal financial information we have marked is highly intimate or embarrassing information for the purposes of common-law privacy and is not of legitimate public interest. Consequently, the department must withhold the information we have marked under sections 552.101 and 552.102(a) of the Government Code in conjunction with common-law privacy. However, we find that the remaining information you have marked consists of employment information that is either not highly intimate and embarrassing or is of legitimate public interest. Accordingly, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.102(a) of the Government Code.

We note that a portion of the information you have redacted without authorization consists of a driver's license number. Section 552.130 of the Government Code excepts from disclosure information that "relates to... a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130(a)(2). We note section 552.130 does not encompass motor vehicle record information of other states. Accordingly, to the extent the redacted driver's license we have marked consists of motor vehicle record information issued by an agency of the State of Texas, the department must withhold it under section 552.130 of the Government Code. The department may not withhold any information that does not pertain to motor vehicle record information issued by an agency of the State of Texas under section 552.130.

In summary, the information we have marked must be withheld under sections 552.101 and 552.102(a) of the Government Code in conjunction with common-law privacy. To the extent the redacted driver's license number was issued by an agency of the State of Texas,

the department must withhold it under section 552.130 of the Government Code. The remaining information must be released, including the remaining information you have redacted without authorization. We have marked the remaining redacted information for release.

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, 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# 341529

Enc. Submitted documents

c: Requestor
(w/o enclosures)