



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2009

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2009-13400

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# 356271.

The Fort Bend County Constable, Precinct 3 (the "constable"), received a request for information related to (1) the termination of a former deputy, who is the requestor's client; (2) the personnel files of the former deputy and another former employee; (3) evaluations of the former deputy; and (4) a copy of the constable's policy and procedure manual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We begin by noting that some of the submitted documents in Exhibit K are not responsive to the instant request for information, as they were created after the date that the constable received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the constable need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received). Although the requestor, in his comments to this office, seeks to clarify the request by excluding certain types of information, there is no indication

that the constable received the clarification. Therefore, we address the constable's arguments regarding this information.

We next note that the submitted information includes information that is subject to section 552.022 of the Government Code. Section 552.022(a) enumerates categories of information that are public information and not excepted from required disclosure under the Act unless they are expressly confidential under other law. The information that you submitted to us for review contains completed investigation and evaluations, which fall into one of the categories of information made expressly public by section 552.022. *See* Gov't Code § 552.022(a)(1). Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law.

Exhibit E and portions of Exhibit N are subject to section 552.022(a)(1) of the Government Code.¹ Although you raise section 552.103 of the Government Code for this information, this section is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the constable may not withhold the information subject to section 552.022 under section 552.103 of the Government Code. You also raise section 552.101 of the Government Code for some of the information at issue. Because information subject to section 552.022 may be withheld under section 552.101, we will consider your arguments for this exception with respect to the information subject to section 552.022, along with your arguments for the information that is not subject to section 552.022.

We next address your claim under section 552.103 of the Government Code for the information not subject to section 552.022. Section 552.103 provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

¹We note that the constable does not raise section 552.108 for this information.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); see Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You argue the constable anticipated litigation on the day it received the instant request for information because the requestor stated he represents the former deputy in an appeal of his termination. However, as we stated above, the fact that a party has hired an attorney who makes a request for information is insufficient to show that litigation is reasonably anticipated. *Id.* Thus, you have not demonstrated the requestor or his client had taken concrete steps towards litigation at the time of the constable’s receipt of the instant request.

Therefore, we find you have failed to establish the constable reasonably anticipated litigation when it received this request for information. Accordingly, we conclude the information not subject to section 552.022 may not be withheld under section 552.103.²

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 section 6103(a) of title 26 of the United States Code. 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, over-assessments 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).

Exhibit H contains W-4 forms, including those of the requestor's client. Pursuant to section 6103(c) of title 26 of the United States Code, the constable must release the client's forms to the requestor if the Secretary of the Treasury determines that such disclosure would not seriously impair federal tax administration. In that case, the constable must withhold the remaining W-4 forms under section 552.101 of the Government Code in conjunction with federal law. In the absence of such a determination, all of the submitted W-4 forms are

²We also note section 552.103 does not apply to information that has either been obtained from or provided to the opposing party. See Open Records Decision Nos. 349 (1982), 320 (1982). The former deputy has seen some of the submitted information.

confidential under section 6103 of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Exhibit K contains an F-5 form ("Report of Separation of Licensee"). Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the public availability of an F-5 form submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) A report or statement submitted to [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 subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. In this instance, it does not appear that the officer at issue resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We, therefore, conclude that the constable must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

The submitted information also contains L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by 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 the following:

- (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.

Id. § 1701.306(a), (b). Thus, we determine that the constable must withhold the submitted L-2 and L-3 declarations we have marked in Exhibit K under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Exhibit M contains fingerprint information. The public availability of fingerprints is governed by chapter 560 of the Government Code, which is also encompassed by section 552.101. *See* Gov't Code §§ 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry), .003 (biometric identifier in possession of governmental body is exempt from disclosure under Act). Section 560.002 provides, however, that "[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]" *Id.* § 560.002(1)(A). Therefore, as the authorized representative of one of the individuals whose fingerprints are contained in the submitted documents, the requestor has a right of access to the fingerprint information of his client under section 560.002(1)(A) of the Government Code, and the constable may not withhold that information from this requestor under section 552.101 of the Government Code. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). However, you do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the remaining fingerprint information. Therefore, the constable must withhold the remaining fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information in accordance with chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Furthermore, any CHRI obtained from DPS or any

other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Information relating to routine traffic violations is not excepted from release under section 552.101 on this basis. *See id.* § 411.082(2)(B). We have marked the information that the constable must withhold under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. *See id.* § 411.083(b)(3).

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides in part the following:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a), (b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Upon review, we determine that the information we have marked in Exhibit D constitutes medical records that may only be released in accordance with the MPA. Although you also seek to withhold under the MPA signed release forms in Exhibits C and G, we find that you have failed to demonstrate that any of the remaining information at issue consists of medical records that are subject to the MPA. Thus, the constable may not withhold any of the remaining information on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision Nos. 600 (1992), 545 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to be generally those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common-law right to privacy). In addition, this office has found 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).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* at 525. In concluding, the *Ellen* court held "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. See Open Records Decision Nos. 393 (1983), 339 (1982). However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

In this instance, we find that the completed investigation in Exhibit E relates to a sexual harassment investigation. We find this investigation contains an adequate summary of the investigation and a statement of the accused. The summary and statement of the accused are not confidential; however, information within the summary and statement identifying the alleged victim and witnesses must be redacted and the rest of the sexual harassment investigation must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. See *Ellen*, 840 S.W.2d at 525. The constable must

also withhold the information we have marked in Exhibit G under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home 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. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note section 552.117 also encompasses a personal pager, fax, or cellular telephone number, if the officer personally pays for the service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1998) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). We also note that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at *home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). We further note that because section 552.117 protects personal privacy, the requestor has a special right of access to private information concerning his client that would generally be excepted from public disclosure. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).³ The other individual is no longer employed by the constable, and it is unclear whether the individual is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individual at issue is a licensed peace officer as defined by article 2.12, the constable must withhold the types of personal information we have marked under section 552.117(a)(2) of the Government Code; however, the constable may only withhold fax, pager, or cellular telephone numbers if the officer at issue paid for the service with his own funds.

If the individual at issue is not a licensed peace officer, then his personal information may be excepted under section 552.117(a)(1) of the Government Code.⁴ Section 552.117(a)(1) excepts from disclosure the 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. Gov't Code § 552.117(a)(1). Whether a particular

³Section 552.023(a) provides that "[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." Gov't Code § 552.023(a).

⁴*See* Act of May 17, 1993, 73rd Leg., R.S., ch. 268, § 1, sec. 552.024, 1993 Tex. Gen. Laws 583, 599, amended by Act of June 3, 2009, 81st Leg., R.S., ch. 283, § 1, 2009 Tex. Sess. Law Serv. 741, 741 (Vernon) (to be codified as an amendment to Gov't Code § 552.024(c)) (if employee or official or former employee or official chooses not to allow public access to their personal information, governmental body may redact the information without necessity of requesting decision from this office).

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). The constable may only withhold information under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. The submitted records indicate that the former employee made a timely election pursuant to section 552.024, but only for his home address and telephone number, not for his family information or social security number. Therefore, only the individual's current and former home addresses and telephone numbers are excepted from public disclosure under section 552.117(a)(1) of the Government Code. Further, the constable may only withhold fax, pager, or cellular telephone numbers under section 552.117(a)(1) if the individual paid for the service with his own funds.

The remaining documents also contain information pertaining to peace officers who are not employed by the constable.⁵ Section 552.1175 of the Government Code provides in part:

(b) 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.

Id. § 552.1175(b). Provided that the individuals in question are peace officers who elect to restrict access to their personal information in accordance with section 552.1175, the constable must withhold the information we have marked under section 552.1175 of the Government Code.⁶ *See, e.g.*, Open Records Decision No. 678 (2003).

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. Gov't Code § 552.147. The requestor has a right, however, to his client's social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom

⁵This office will raise a mandatory exception such as section 552.1175 on behalf of a governmental body, as the Act makes the release of confidential information a criminal offense. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 (1982).

⁶*See* Act of May 3, 2001, 77th Leg., R.S., ch. 119, § 3, 2001 Tex. Gen. Laws 237, 237, amended by Act of June 3, 2009, 81st Leg., R.S., ch. 283, § 2, 2009 Tex. Sess. Law Serv. 741, 741-42 (Vernon) (to be codified at Gov't Code § 552.1175(f)) (governmental body may redact personal information of peace officer without necessity of requesting decision from this office).

information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). Therefore, except for the social security number of the requestor's client, the constable may withhold the social security numbers in the remaining information under section 552.147 of the Government Code.⁷

Section 552.130 of the Government Code exempts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. *See id.* § 552.130(a)(1)-(2). Because this exception protects personal privacy, the requestor has a special right of access to his client's motor vehicle information under section 552.023 of the Government Code, and that information may not be withheld from this requestor under section 552.130. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). We have marked the Texas motor vehicle information that must be withheld under section 552.130 of the Government Code.

Section 552.136 of the Government Code 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." Gov't Code § 552.136(b); *see id.* § .136(a) (defining "access device"). However, section 552.136 also protects personal privacy; thus, the requestor has a right of access to his client's account numbers pursuant to section 552.023. The constable must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the constable must withhold the following under section 552.101 of the Government Code: (1) W-4 forms pursuant to section 6103(c) of title 26 of the United States Code, unless federal law provides a right of access to the requestor; (2) the F-5 form in conjunction with section 1701.454 of the Occupations Code; (3) the marked L-2 and L-3 declarations in Exhibit K in conjunction with section 1701.306 of the Occupations Code; (4) fingerprint information of the former employee who is not the requestor's client in conjunction with section 560.003 of the Government Code; (5) CHRI in conjunction with chapter 411 of the Government Code; (6) medical records we have marked in Exhibit D, which may only be released in accordance with the MPA; (7) information within the adequate summary and statement of the accused in Exhibit E identifying the alleged sexual harassment victim and witnesses and the rest of the sexual harassment investigation in conjunction with common-law privacy; and (8) the information we have marked in Exhibit G in conjunction with common-law privacy. To the extent the former employee who is not the requestor's client was a licensed peace officer as defined by article 2.12, the constable must withhold the types of personal information we have marked under section 552.117(a)(2) of the Government Code. If the named individual is not a licensed peace officer, the individual's current and former home addresses and telephone numbers are excepted from

⁷We 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.

public disclosure under section 552.117(a)(1) of the Government Code. The constable may only withhold fax, pager, or cellular telephone numbers under section 552.117 of the Government Code if the individual paid for the service with his own funds. The constable must withhold the information we have marked under section 552.1175 of the Government Code regarding individuals who are peace officers not employed by the constable and who elect to restrict access to their personal information in accordance with section 552.1175. Except for the social security number of the requestor's client, the constable may withhold social security numbers under section 552.147 of the Government Code. The constable must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The remaining information must be released to the requestor.⁸

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 356271

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁸Because such information may be confidential with respect to the general public, if the constable receives another request for this information from an individual other than this requestor, the constable should again seek our decision.