



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2010

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County Courthouse
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2010-03925

Dear Ms. Lytle:

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# 373149.

The El Paso County Sheriff's Office (the "sheriff") received a request for all training materials for the Special Reaction Team unit for the sheriff for the last five years; all incident reports pertaining to use of excessive force, inappropriate conduct, harassment, or injuries involving the Special Reaction Team; and the internal affairs file, any complaints, or disciplinary actions taken against a named peace officer. You state that you will release most of the requested information. You claim that the submitted information is 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.

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 402.083 of the Labor Code, which provides, "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation of the Texas Department of Insurance] except as provided by this subtitle." *See* Labor Code § 402.083. This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 6 (1993). In Open Records Decision No. 533 (1989), the City of Brownsville had received a request for similar information. This office construed the predecessor to section 402.083(a) to apply only to information that the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6; *see also* Labor Code § 402.086 (transferring confidentiality conferred by Labor Code § 402.083(a) to information that other parties obtain from division files). Accordingly, information in the possession of the sheriff that was not

obtained from the division may not be withheld on the basis of section 402.083(a). In this instance, none of the submitted information was obtained from the division, but was instead prepared by the sheriff. Accordingly, the sheriff may not withhold any of the submitted information under section 552.101 in conjunction with section 402.083 of the Labor Code.

Section 552.101 also encompasses information made confidential by the doctrine of common-law privacy. Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act. See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (citing *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976)). We will therefore consider the applicability of common-law privacy under section 552.101 together with your claim under section 552.102.

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. *Indus. Found.*, 540 S.W.2d at 685. 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. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are 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). Accordingly, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate that the remaining information in the submitted injury reports is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining information may be withheld under either section 552.101 or section 552.102 in conjunction with common-law privacy.

We note that some of the remaining information is subject to section 552.117(a)(2) of the Government Code.¹ Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information

¹The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

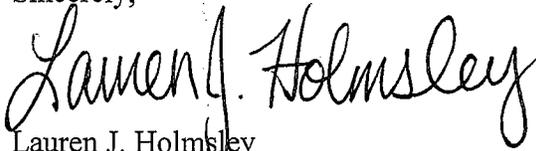
that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 of the Government Code.² Gov't Code § 552.117(a)(2). Therefore, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

In summary, the sheriff must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and section 552.117(a)(2). The remaining information must be released.

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,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 373149

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.