



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2010

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

OR2010-08113

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# 381548.

The Williamson County Sheriff's Office (the "sheriff") received a joint request from two requestors for information relating to a specified internal affairs case number. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We initially note that the requestors do not seek access to social security, Texas driver's license, Texas license plate, or vehicle identification numbers. Thus, the social security numbers that appear in the submitted documents are not responsive to this request for information. Therefore, this decision does not address the public availability of the submitted social security numbers, which need not be released in response to this request.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Information acquired from a polygraph examination is confidential under section 1703.306 of the Occupations Code, which provides in part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a). Thus, although information acquired from a polygraph examination is generally confidential under section 1703.306(a), the sheriff has the discretion to release such information to a polygraph examinee or the examinee's authorized representative pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, disclosure of examination results to polygraph examinees).

In this instance, the submitted information includes the reports of polygraph examinations of two examinees and information acquired from those examinations. We note that the requestors are the examinee in the second polygraph examination and the examinee's spouse. We also note that you do not seek to withhold any of the information that pertains to the second examination under section 1703.306(a). We therefore assume that the sheriff has elected to exercise his discretion to release the information relating to that examination to these requestors. You contend, however, that marked information pertaining to the other examination is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. We agree that some of the marked information must be withheld from the requestors under section 552.101 in conjunction with section 1703.306. We find, however, that the rest of the information at issue was not acquired from a polygraph examination. We therefore conclude that the remaining information may not be withheld under section 552.101 in conjunction with section 1703.306(a). We have marked that information for release.

You also claim section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You have marked information the sheriff seeks to withhold under section 552.117. We have marked other information that may be protected by this exception. The sheriff must withhold the information you have marked, as well as the information we have marked, pursuant to section 552.117(a)(2) to the extent the information pertains to a peace officer.

To the extent the information marked under section 552.117 does not pertain to a peace officer, it may be excepted from disclosure under section 552.117(a)(1).

Section 552.117(a)(1) excepts the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that these types of information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, the information marked under section 552.117 must be withheld pursuant to section 552.117(a)(1) to the extent the employees concerned timely requested confidentiality for the information under section 552.024.

Section 552.1175 of the Government Code is applicable to information relating to a county jailer, as defined by section 1701.001 of the Occupations Code. *See* Gov't Code § 552.1175(a)(2). Section 552.1175(b) provides as follows:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, 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). The sheriff must withhold the information you have marked under section 552.1175, as well as the information we have marked, to the extent that the information pertains to a county jailer who elects to restrict access to the marked information in accordance with section 552.1175(b).

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). *Id.* § 552.137(a)-(c). We note that section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or

employees. We agree that the sheriff must withhold the e-mail address you have marked under section 552.137, unless the owner of the e-mail address has affirmatively consented to its public disclosure.¹

Lastly, we note that some of the submitted information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) except for the information we have marked for release, the sheriff must withhold the information you have marked that was acquired from a polygraph examinations under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (2) the information you have marked under section 552.117 of the Government Code, as well as the information we have marked under that section, must be withheld pursuant to section 552.117(a)(2) to the extent the information pertains to a peace officer; (3) to the extent it does not pertain to a peace officer, the information marked under section 552.117 must be withheld pursuant to section 552.117(a)(1) to the extent the employees concerned timely requested confidentiality for the information under section 552.024 of the Government Code; (4) the information you have marked under section 552.1175 of the Government Code, as well as the information we have marked under that section, must be withheld to the extent the information pertains to a county jailer who elects to restrict access to the marked information in accordance with section 552.1175(b); and (5) the marked e-mail address must be withheld under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure. The rest of the submitted information must be released, but any information that is protected by copyright may only be released in compliance with copyright law.²

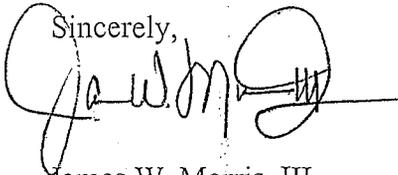
¹We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

²In addition to the generally confidential polygraph information that the sheriff is releasing to these requestors, the submitted documents contain information that implicates the privacy interests of one of the requestors. The requestor has a right of access, however, to her own private information. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the sheriff receive a request for these same records from another requestor, the sheriff should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rl

Ref: ID# 381548

Enc: Submitted documents

cc: Requestor
(w/o enclosures)