



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2010

Mr. Shain Chapman  
Mason County Attorney  
P.O. Box 157  
Mason, Texas 76856

OR2010-08596

Dear Mr. Chapman:

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# 382599.

The Mason County Sheriff's Office (the "sheriff") received a request for (1) all records and reports involving a named officer and (2) all use of force reports, employment history, disciplinary action, and any complaints against the named officer. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your claim that the portion of the request seeking all records and reports involving the named officer is "overly broad" and would require extensive effort to determine which of the responsive information would be subject to exception under section 552.108 of the Government Code. You argue that, in order to respond to this portion of the request, the sheriff would be required to manually review all case reports prior to July 2009 and all tickets from the past 20 months. We note that a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Thus, the sheriff must release the requested information unless it falls within the scope of an exception to disclosure.

Next, we must address the sheriff's obligations under the Act. Pursuant to section 552.301(e)(1)(D) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request for information a copy of the specific information requested or representative samples thereof. *See* Gov't Code § 552.301(e)(1)(D). Although you submitted some of the responsive information by the appropriate deadline, as of the date of this letter, you have not submitted information responsive to the portion of the request seeking all records or reports involving the named officer. Thus, we find the sheriff failed to comply with the requirements of section 552.301 with respect to that information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You claim that some of the information at issue is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that a governmental body may waive. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the sheriff may not withhold any of the information at issue under section 552.108. As you raise no further exceptions to disclosure of the information responsive to the portion of the request seeking all records or reports involving the named officer, that information must be released to the requestor.

We now address your arguments against disclosure of 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. This exception encompasses information protected by other statutes. The submitted information includes a crash report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the sheriff with at least two of the three pieces of information pursuant to section 550.065(c)(4).

Therefore, the sheriff must withhold the submitted crash report form, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 143.089 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. See Local Gov't Code § 143.089(a), (g). You claim some of the submitted information is excepted from disclosure under section 143.089(g). However, we note the provisions of chapter 143 of the Local Government Code only apply to civil service cities. In this instance, the information at issue is held by the county sheriff and not by a civil service city. Accordingly, section 143.089 is inapplicable to the submitted information.

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

(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. The submitted information includes F-5 Report of Separation of License Holder forms. In this instance, the named officer did not resign due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff must withhold the F-5 forms we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

You claim some of the remaining submitted information is confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy and under section 552.102 of the Government Code. Section 552.101 encompasses the doctrine of common-law privacy. Section 552.102(a) 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). 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). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). 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 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). This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we conclude that the information we have marked reflects personal financial decisions and does not involve a financial transaction between the individual at issue and a governmental body. Therefore, the information we have marked must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. You indicate the named individual is a licensed peace officer with the sheriff. Therefore, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

We note portions of the remaining information may be excepted from disclosure under section 552.1175 of the Government Code.<sup>1</sup> Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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(a)(1), (b). We have marked information that may be subject to section 552.1175. To the extent this information pertains to a currently licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b), the sheriff must withhold it under section 552.1175(b).

Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." *Id.* § 552.130(a)(1). Accordingly, the sheriff must withhold the Texas driver's license numbers we have marked under section 552.130.<sup>2</sup>

In summary (1) the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (2) the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (3) the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code; (5) to the extent the information we have marked pertains to a currently licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the sheriff must withhold it under section 552.1175(b); and (6) the sheriff must withhold the information we have marked under section 552.130 of the Government Code. The remaining requested information must be released to the requestor.

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<sup>2</sup>We note 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 a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 382599

Enc. Submitted documents

c: Requestor  
(w/o enclosures)