



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2010

Mr. W. Lee Auvenshine
Assistant County & District Attorney
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2010-09553

Dear Mr. Auvenshine:

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# 384658.

The Ellis County Sheriff's Office (the "sheriff") received a request for all records relating to personnel counseling or discipline during a specified time period, all records relating to a specified disciplinary action against a named individual, and a specified letter from the sheriff. You state you will release the records relating to personnel counseling or discipline and the specified disciplinary action. You claim a portion of the submitted letter is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 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)).

Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate or 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. Upon review, we agree a portion of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the sheriff must withhold this information, which we have marked, under section 552.102(a) of the Government Code. However, none of the remaining information is highly intimate or embarrassing, and the sheriff may not withhold it under section 552.102(a).

We note a portion of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(2) of the Government Code 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). In this case, it is unclear whether the individual whose personal information is at issue 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 sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

If the individual at issue is not a licensed peace officer, then the personal information may be excepted under section 552.117(a)(1) of the Government Code. 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 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 sheriff 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. Therefore, if the individual at issue is not a licensed peace officer and timely elected to keep his personal information confidential, the sheriff must withhold the marked information under section 552.117(a)(1). Otherwise, this information may not be withheld under section 552.117.

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

In summary, the sheriff must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent the individual whose information is at issue is a licensed peace officer, the sheriff must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code. If the individual whose information is at issue is not a licensed peace officer, the sheriff must withhold this information under section 552.117(a)(1), provided the individual timely elected to keep his personal information confidential. 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/tp

Ref: ID# 384658

Enc. Submitted documents

c: Requestor
(w/o enclosures)