



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2011

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2011-00386

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# 405553.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for the personnel files of two named individuals. You indicate the sheriff has released the unsubmitted portions of the responsive personnel files to the requestor. You have redacted information in accordance with Open Records Decision No. 670 (2001), which is a previous determination by this office authorizing a governmental body to redact information subject to section 552.117(a)(2) of the Government Code.¹ You have also redacted social security numbers pursuant to section 552.147 of the Government Code.² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Open Records Decision No. 670 allows a governmental body to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers under section 552.117 of the Government Code without the necessity of requesting an attorney general decision under section 552.301. ORD 670 at 6.

²Section 552.147(b) of the Government Code authorizes a government 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.

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 information made confidential by other statutes, such as section 1701.454 of the Occupations Code, which governs the release of reports or statements submitted to the Texas Commission on Law Enforcement Officers Standards and Education ("TCLEOSE"). 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. The submitted information contains F-5 ("Report of Separation of Licensee") reports, which do not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff must withhold the submitted F-5 reports pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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 demonstrated. *Id.* at 681-82. Prior decisions of this office have determined that personal financial information not related to a transaction between an individual and a governmental body generally meets the first prong of the common-law privacy test. *See generally* Open Records Decision No. 600 (1992). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See id.* at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure); *see also* Open Records Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common law privacy), 523 (1989). Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). Upon review, the remaining submitted information consists of personal financial documents for one of the named officers that are unrelated to any financial transaction with the sheriff. We therefore conclude the remaining

information is highly intimate or embarrassing information of no legitimate public interest, and the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff must withhold the submitted F-5 reports under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff must also withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

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# 405553

Enc. Submitted documents

c: Requestor
(w/o enclosures)