



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

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

OR2011-01614

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# 407704.

The Williamson County Sheriff's Office (the "sheriff") received a request for (1) the complete investigative file for a specified case, (2) witness statements relating to the investigation, (3) e-mails concerning the investigation, (4) documents and other information used in the termination of a named deputy, (5) written complaints related to the investigation, and (6) the deputy's complete personnel file. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted only portions of a transcribed interview with the deputy at issue and the entrance level examination for the patrol division. To the extent information that is responsive to the remainder of the request existed on the date the sheriff received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), 302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 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 established. *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. 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). Upon review, we find the information we have marked constitutes information that is highly intimate or embarrassing and is of no legitimate concern to the public. Accordingly, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) 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, regardless of whether the peace officer made an election under section 552.024 of the Government Code.¹ *See* Gov’t Code § 552.117(a)(2); Open Records Decision No. 622 (1994); *see also* Open Records Decision No. 670 at 6 (2001) (determining that a governmental body may withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision). The submitted documents contain information pertaining to sheriff’s deputies. Accordingly, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.122 of the Government Code excepts from public disclosure “a test item developed by a . . . governmental body[.]” Gov’t Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated,” but does not encompass evaluations of an employee’s overall job performance or suitability. *Id.* at 6. The question of whether specific information falls

¹The 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).

within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4–5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

You seek to withhold the sheriff’s Entrance Level Examination under section 552.122 of the Government Code. You explain that the exam tests individuals who apply for a position with the sheriff. We understand the exam is used on a continuing basis and release of this information would compromise the effectiveness of future exams. Having reviewed the submitted information and your arguments, we find the information we have marked consists of “test items” for purposes of section 552.122(b), and the answers reveal the questions themselves. We therefore conclude that the sheriff may withhold the exam information we have marked under section 552.122 of the Government Code. We note that the remaining information you seek to withhold under section 552.122 consists of multiple choice answer sheets that do not reveal any test questions. Therefore, the remaining information you have marked under section 552.122 may not be withheld on that basis.

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information we have marked under section 552.117(a)(2) of the Government Code. The sheriff may withhold the information we have marked under section 552.122 of the Government Code. The remaining information must be released.²

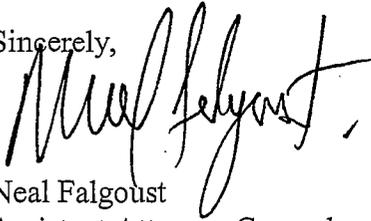
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

²We note the requestor identifies himself as an attorney for the sheriff’s deputy named in the request. Accordingly, this requestor has a special right of access under section 552.023 of the Government Code to some of the family member information being released in this instance. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

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 "Neal Falgoust". The signature is written in a cursive style with a large, sweeping initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 407704

Enc. Submitted documents

c: Requestor
(w/o enclosures)