



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2011

Ms. Myra K. Morris  
Royston Razor  
For the Jim Wells County Sheriff's Office  
1300 Frost Bank Building  
802 North Carancahua  
Corpus Christi, Texas 78401-0021

OR2011-05710

Dear Ms. Morris:

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# 415513 (Sheriff's File No. 46,769).

The Jim Wells County Sheriff's Office (the "sheriff"), which you represent, received a request for complaints filed against a named sheriff's deputy during his employment. You claim that 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.

We note the portions of the submitted information consist of the personal information of two sheriff's deputies.<sup>1</sup> Section 552.117(a)(2) of the Government Code 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. Therefore, the sheriff must withhold the personal information of the

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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).

deputy who is not named in the request, which we have marked, under section 552.117(a)(2) of the Government Code. However, we note the deputy named in the request may no longer be a licensed peace officer. If the deputy named in the request is currently a licensed peace officer, the sheriff must withhold his personal information, which we have marked, under section 552.117(a)(2); however if he is no longer a licensed peace officer, his personal information may not be withheld under section 552.117(a)(2) of the Government Code.

If the deputy named in the request is no longer a licensed peace officer, his personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone numbers, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 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 the information at issue under section 552.117(a)(1) if the individual at issue elected confidentiality under section 52.024 prior to the date on which the request for this information was made. Accordingly, if the deputy named in the request is no longer a licensed peace officer and made a timely election under section 552.024, the sheriff must withhold his personal information, which we have marked, under section 552.117(a)(1). If the deputy named in the request is no longer a licensed peace officer and did not make a timely election under section 552.024, his personal information may not be withheld under section 552.117(a)(1).

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 common-law right of privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate and 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. *See id.* at 683. You generally claim the remaining information is confidential in its entirety under common-law privacy. While we agree that portions of the remaining information are highly intimate or embarrassing, we note that this information pertains to an individual who is not identified in the remaining information. Thus, none of the remaining information implicates any individual's privacy

interests. Accordingly, the sheriff may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the sheriff must withhold the marked personal information of the deputy not named in the request under section 552.117(a)(2) of the Government Code. If the deputy named in the request is currently a licensed peace officer, the sheriff must withhold his marked personal information under section 552.117(a)(2) of the Government Code. If the deputy named in the request is not a currently licensed peace officer and made a timely request under section 552.024 of the Government Code, the sheriff must withhold his marked personal information under section 552.117(a)(1) of the Government Code. 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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 415513

Enc. Submitted documents

c: Requestor  
(w/o enclosures)