



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2011

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

OR2011-05810

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# 415670.

The County of Fort Bend (the "county") received a request for the personnel files of three named officers with the county sheriff's office. We note you have redacted social security numbers from the submitted information pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information made confidential by statute, such as chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). We note the submitted information includes a CR-3 crash report form completed pursuant to chapter 550 of the Transportation Code. Section 550.065(c) states that except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person

¹Section 552.147(b) of the Government Code authorizes a governmental 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.

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 two of the three pieces of required information for the submitted CR-3 crash report form. Thus, the county must withhold the CR-3 crash report form 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 1701.454 of the Occupations Code, which governs the public availability of an F-5 form ("Report of Separation of Licensee") submitted to the Texas Commission on Law Enforcement Officer Standards ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) A report or statement submitted to the [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 remaining information contains F-5 "Report of Separation of License Holder" reports, which do not indicate the officers whose information is at issue resigned or were terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the county 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.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). This office has also found that personal financial

information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we conclude some of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Thus, the county must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing and a matter of no legitimate public concern. Thus, the county may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Some of the remaining information is subject to section 552.117(a)(2) of the Government Code, which excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. "Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure. We note section 552.117(a)(2) protects a peace officer's personal cellular telephone or pager number if the officer pays for the cellular telephone or pager service with his personal funds. *See* Open Records Decision No. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) excepts from disclosure peace officer's cell phone or pager number if officer pays for cell phone or pager service). *But see* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to Gov't Code § 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). You have redacted personal information of the named peace officers, which you are authorized to do pursuant to the previous determination of this office in Open Records Decision No. 670 (2001).² However, the information reflects that one of the individuals whose information is at issue may no longer be employed by the county. Additionally, we note the remaining information includes additional personal information. To the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the county must withhold the information you have redacted, and the additional information we have marked, under section 552.117(a)(2) of the Government Code; however, the county may only withhold the marked cellular telephone and pager numbers if the service for the numbers is not paid for by the county. To the extent the individuals concerned are no longer licensed peace officers, the marked information may not be withheld under section 552.117(a)(2) of the Government Code.

²Open Records Decision No. 670 (2001) authorizes a governmental body to withhold the home addresses and telephone numbers, social security numbers, and family member information of peace officers, as defined by article 2.12 of the Code of Criminal Procedure, under section 552.117(a)(2) without the necessity of requesting a decision from this office.

If the individuals are no longer licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals whose information is at issue are no longer licensed peace officers and they timely elected confidentiality under section 552.024, the county must withhold the information you have redacted and the information we have marked under section 552.117(a)(1) of the Government Code; however, the county may only withhold the marked cellular telephone and pager numbers if the service for the numbers is not paid for by the county. The county may not withhold the marked or redacted information under section 552.117(a)(1) to the extent the individuals did not timely elect to keep their personal information confidential.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note you have redacted Texas driver's license numbers, which you are authorized to do pursuant to the previous determination of this office in Open Records Decision No. 684 (2009).³ However, we note Open Records Decision No. 684 and section 552.130 do not apply to out-of-state motor vehicle record information. In this instance, a portion of the information you have redacted relates to out-of-state motor vehicle record information. Further, the remaining information includes additional information subject to section 552.130 of the Government Code. With the exception of the information we have marked for release, the county must withhold the information you have redacted and the additional information we have marked under section 552.130 of the Government Code.

We note the remaining information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.⁴ Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly

³Open Records Decision No. 684 (2009) authorizes a governmental body to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting a decision from this office.

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

The remaining information contains an insurance policy number that is subject to section 552.136 of the Government Code. Section 552.136(b) states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the county must withhold the insurance policy number we have marked under section 552.136 of the Government Code.⁵

In summary, the county must withhold: the CR-3 crash report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; 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; and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the county must withhold the information you have redacted and the additional information we have marked under section 552.117(a)(2) of the Government Code; however, the county may only withhold the marked cellular telephone and pager numbers if the service for the numbers is not paid for by the county. If the individuals whose information is at issue are no longer licensed peace officers, then to the extent they timely elected confidentiality under section 552.024, the county must withhold the information you have redacted and the information we have marked under section 552.117(a)(1) of the Government Code; however, the county may only withhold the marked cellular telephone and pager numbers if the service for the numbers is not paid for by the county. With the exception of the information we have marked for release, the county must withhold the information we have marked and it has redacted under section 552.130 of the Government Code. The county must also withhold the information we have marked under sections 552.102(a) and 552.136 of the Government Code. The remaining information must be released.

⁵Open Records Decision No. 684 (2009) authorizes a governmental body to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting a decision from this office.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 415670

Enc. Submitted documents

c: Requestor
(w/o enclosures)