



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2011

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

OR2011-06071

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# 416298.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for all records in a named former deputy's personnel file. You claim the submitted personnel records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.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 information other statutes make confidential, such as section 1701.454 of the Occupations Code. This section provides, in relevant part, "[a] report or statement submitted to the [Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE")] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses."

¹To the extent any additional responsive information existed on the date the sheriff received this request, we assume you have released it. If you have not released any such records, 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).

Occ. Code § 1701.454(a). You seek to withhold the F-5 Report of Separation of License Holder form submitted as Exhibit C. In this instance, the submitted F-5 form reflects the named former deputy to whom this form applies did not resign 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 form in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

You generally assert some of the personnel records submitted as Exhibit B are protected by common-law privacy. 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 established. *Id.* at 681-82. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 545 (1990). We have marked bank, credit, and financial history information in Exhibit B that is not of legitimate public concern. The sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) 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."² 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. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). The sheriff must withhold the former deputy's date of birth we have marked in Exhibit B under section 552.102(a) of the Government Code.

You have redacted portions of the remaining information in Exhibit B, but have not explained why or by what authority you have redacted this information.³ Some of the redacted information includes the named deputy's home addresses and telephone numbers, social security number, family member information, work telephone numbers, fiancé's

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³Generally, information must be submitted to this office in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the sheriff should refrain from redacting any information it submits to this office in seeking an open records ruling, unless the sheriff has been authorized to make such redactions.

information, and landlords' information. We presume you have redacted this information under section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001).⁴ Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.⁵ Gov't Code § 552.117(a)(2). Additionally, section 552.117(a)(2) encompasses a peace officer's personal cellular telephone number, provided the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024).

Because the work telephone numbers, fiancé information, and landlord information you have redacted do not constitute the home addresses, home telephone numbers, social security number, or family member information of a peace officer, the sheriff may not withhold that redacted information under section 552.117(a)(2) of the Government Code. As you have not claimed any exceptions to disclosure for this information, the sheriff must release it. Furthermore, in this instance, the submitted personnel records reflect the named former deputy whose information is at issue is no longer employed by the sheriff, and it is unclear whether this individual is currently a licensed peace officer as defined by article 2.12. Thus, if the former deputy is a currently licensed peace officer as defined by article 2.12, the sheriff must withhold his home addresses, home telephone numbers, family member information, and social security number you have redacted, and the additional information we have marked, under section 552.117(a)(2) of the Government Code. Likewise, if the former deputy paid for his cellular service, the sheriff must withhold the former deputy's cellular telephone number we have marked under section 552.117(a)(2) of the Government Code. If, however, the former deputy is not a currently licensed peace officer, his personal information may not be withheld under section 552.117(a)(2) of the Government Code.

However, if the former deputy is no longer a licensed peace officer, then his 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. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by

⁴Open Records Decision No. 670 is a previous determination that authorizes all governmental bodies to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code, without the necessity of requesting an attorney general decision.

⁵"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

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, if the former deputy is no longer a licensed peace officer as defined by article 2.12, then to the extent he timely elected confidentiality under section 552.024, the sheriff must withhold his marked home addresses, home telephone numbers, family member information, and social security number under section 552.117(a)(1) of the Government Code. Similarly, if the former deputy paid for his cellular service, the sheriff must withhold the former deputy's marked cellular telephone number under section 552.117(a)(1) of the Government Code. If, however, the former deputy is no longer a licensed peace officer and did not timely elect to keep his personal information confidential, his marked personal information must be released.⁶

You have also redacted Texas motor vehicle record information in Exhibit B, presumably under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009). This decision acts as a previous determination to all governmental bodies authorizing them 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 an attorney general decision. This decision, however, does not authorize governmental bodies to withhold a Texas driver's license class or issuing state under section 552.130 of the Government Code without the necessity of requesting an attorney general decision. In this instance, you have redacted a Texas driver's license number, class, and issuing state. Because Open Records Decision No. 684 does not authorize the withholding of a Texas driver's license class or issuing state, the redacted driver's license class and issuing state may not be withheld under section 552.130 pursuant to Open Records Decision No. 684.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Section 552.130, however, does not except a driver's license issuing state because this section applies only to motor vehicle record information issued by a Texas agency. Consequently, the sheriff may not withhold the redacted Texas driver's license issuing state under section 552.130. As you have not claimed any exceptions to disclosure for this information, the sheriff must release it. The sheriff must, however, withhold the Texas driver's license class you have redacted, as well as the

⁶Regardless of the applicability of section 552.117(a)(1), section 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. Gov't Code § 552.147(b).

Texas license plate numbers and additional Texas driver's license number and class we have marked, in Exhibit B under section 552.130 of the Government Code.⁷

The remaining information you have redacted in Exhibit B includes a bank account number and bank account type. We presume you have redacted this information under section 552.136 of the Government Code pursuant to Open Records Decision No. 684, which also authorizes governmental bodies to withhold bank account numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. This decision, however, does not authorize governmental bodies to withhold a bank account type under section 552.136 of the Government Code without the necessity of requesting an attorney general decision. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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.

Id. § 552.136. You have not explained how the bank account type you have redacted constitutes an access device number that may be used to obtain money, goods, services, or another thing of value for purposes of section 552.136. Consequently, the sheriff may not withhold the redacted bank account type under section 552.136 of the Government Code. As you have not claimed any exceptions to disclosure for this information, the sheriff must release it. The remaining information in Exhibit B, however, includes an insurance policy number, which we have marked. We conclude the marked insurance policy number constitutes an access device number for purposes of section 552.136. Thus, the sheriff must

⁷In addition to Texas driver's license numbers, Open Records Decision No. 684 authorizes governmental bodies to withhold Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

withhold the insurance policy number we have marked in Exhibit B under section 552.136 of the Government Code.⁸

In summary, the sheriff must withhold (1) the submitted F-5 form in Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (2) the personal financial information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the date of birth we have marked in Exhibit B under section 552.102(a) of the Government Code; (4) the Texas driver's license class you have redacted, as well as the Texas license plate numbers and additional Texas driver's license number and class we have marked, in Exhibit B under section 552.130 of the Government Code; and (5) the insurance policy number we have marked in Exhibit B under section 552.136 of the Government Code. If the former deputy is a currently licensed peace officer as defined by article 2.12, the sheriff must withhold his marked home addresses, home telephone numbers, family member information, and social security number, as well as his cellular telephone number we have marked, if he paid for the cellular service, under section 552.117(a)(2) of the Government Code. If the former deputy is no longer a peace officer as defined by article 2.12, then to the extent he timely elected confidentiality under section 552.024 of the Government Code, the sheriff must withhold his marked home addresses, home telephone numbers, family member information, social security number, and cellular telephone number, if he paid for the cellular service, under section 552.117(a)(1) of the Government Code. The sheriff must release the remaining information.⁹

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.

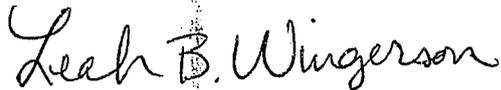
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

⁸We note Open Records Decision No. 684 also authorizes governmental bodies to withhold insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁹It appears you have redacted personal e-mail addresses in the remaining information under section 552.137 of the Government Code pursuant to Open Records Decision No. 684, which also authorizes governmental bodies to withhold e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Furthermore, we note the information to be released includes social security numbers. As previously noted, section 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. Gov't Code § 552.147(b).

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/eeg

Ref: ID# 416298

Enc. Submitted documents

c: Requestor
(w/o enclosures)