



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2011

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

OR2011-06708

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# 417508.

The Williamson County Sheriff's Office (the "sheriff") received a request for information pertaining to a former employee and specified policies, manuals, and rules of conduct. You claim the submitted information in Exhibit B is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. Additionally, you indicate the submitted information in Exhibit C may implicate the proprietary interests of a third party. Accordingly, you inform us, and provide documentation showing, you have notified Tyler Technologies of the request and of its right to submit comments to this office as to why the submitted information in Exhibit C should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Tyler Technologies explaining why its submitted information should not be released. Therefore, we have no basis to conclude that Tyler Technologies has a protected proprietary interest in the submitted information in Exhibit C. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the sheriff may not withhold any portion of the submitted information in Exhibit C based upon the proprietary interests of Tyler Technologies.

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, 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). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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 and most of the information you have marked in Exhibit B, as well as the corresponding information within the submitted audio recording in Exhibit B, is highly intimate or embarrassing and of no legitimate public interest. We note, however, some of the information you have marked either pertains to an individual who is not identified in the submitted information or is not highly intimate or embarrassing or is of a legitimate public interest. Therefore, we find this information, which we have marked for release, does not implicate any individual's privacy interest, and the sheriff may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. Furthermore, you state the sheriff lacks the technical capability to redact the corresponding private information from the

office.

submitted audio recording in Exhibit B. As such, the sheriff must withhold the submitted audio recording in Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, with the exception of the information we have marked for release, the sheriff must withhold the information you and we have marked in Exhibit B, as well as the submitted audio recording in Exhibit B, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code 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.² Gov't Code § 552.117(a)(2). You have marked a personal cellular telephone number of a peace officer in Exhibit B. We note that section 552.117 is applicable only to a personal cellular phone number paid for by the peace officer. *See* Open Records Decision No. 670 at 6 (2001) (statutory predecessor to section 552.117(a)(2) encompassed personal cellular phone numbers and personal pager numbers of peace officers who purchased cellular or pager service with their personal funds). Accordingly, the sheriff must withhold the personal cellular telephone number you have marked in Exhibit B under section 552.117(a)(2) of the Government Code if the peace officer at issue purchased the cellular telephone service with his own funds.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). You have marked an e-mail address in Exhibit B that is not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the sheriff must withhold the e-mail address you have marked in Exhibit B under section 552.137 of the Government Code, unless the owner consents to disclosure.³

Lastly, we note that submitted information in Exhibit C may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of

²“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

³In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including the e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, with the exception of the information we have marked for release, the sheriff must withhold the information you and we have marked in Exhibit B, as well as the submitted audio recording in Exhibit B, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the personal cellular telephone number you have marked in Exhibit B under section 552.117(a)(2) of the Government Code if the peace officer at issue purchased the cellular telephone service with his own funds. The sheriff must withhold the e-mail address you have marked in Exhibit B under section 552.137 of the Government Code, unless the owner consent to disclosure. As no further exceptions to disclosure have been raised, the remaining information in Exhibit B must be released to the requestor.⁴ The submitted information in Exhibit C must be released to the requestor, but only in accordance with copyright law.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

⁴We note that the requestor has a special right of access to the remaining information in Exhibit B being released in this instance. Because such information is confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff must again seek a ruling from this office.

Ref: ID# 417508

Enc. Submitted documents

c: Requestor
(w/o enclosures)