



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2011

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

OR2011-09381

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# 422456.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for the personnel file of a named deputy. You indicate you have redacted the named deputy's personal e-mail address under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor specifically excludes the named deputy's home address, home phone number, social security number, family member information, driver's license number, and license plate number. Thus, this information, which we have marked, is not responsive to the present request. This ruling does not address the public availability of any information

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

that is not responsive to the request, and the sheriff is not required to release that information in response to the request.

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.” Occ. Code § 1701.454(a). In this instance, the submitted F-5 Report of Separation of License Holder forms reflects the named deputy to whom these forms apply 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 forms, which 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 section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code §§ 560.001 (defining “biometric identifier” to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the responsive information does not indicate, that section 560.002 permits the disclosure of the deputy’s fingerprints. Therefore, the sheriff must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You generally assert portions of the responsive information are protected by common-law privacy. Section 552.101 of the Government Code 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) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history) (1990), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). Upon review, we find

the portions of information we have marked are highly intimate or embarrassing and not of legitimate public interest. Thus, the sheriff must withhold this information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate any portion of the remaining responsive information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining responsive information may be withheld under section 552.101 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 named deputy’s date of birth we have marked under section 552.102(a) of the Government Code.

You have redacted portions of the remaining responsive information, 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 cellular telephone number and named deputy’s landlord’s office telephone number. 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, emergency contact information, 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 Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Gen.

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.

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.

Laws 5127, 5132, *amended by* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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 landlord's office telephone number you have redacted does not constitute the home address, home telephone number, emergency contact information, 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 deputy whose information is at issue may no longer be 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 deputy is a currently licensed peace officer as defined by article 2.12 and if the deputy paid for his cellular telephone service, the sheriff must withhold his cellular telephone number you have redacted under section 552.117(a)(2) of the Government Code. If, however, the deputy is not a currently licensed peace officer, his cellular telephone number 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 cellular telephone number may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Gen. Laws 5127, 5132, *amended by* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). 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, if the 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, and the deputy paid for his cellular service, the sheriff must withhold the deputy's cellular telephone number you have redacted under section 552.117(a)(1) of the Government Code. If, however, the deputy did not timely elect to keep his personal information confidential, the deputy's cellular telephone number you have redacted must be released.

You have also redacted Texas motor vehicle record information in the remaining responsive information, presumably under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009). As previously noted, this decision acts as a previous determination to all governmental bodies authorizing them to withhold ten categories of information 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 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, this redacted information may not be withheld under section 552.130 pursuant to Open Records Decision No. 684.

Section 552.130 provides in relevant part:

- (a) Information is excepted from the requirements of Section 552.021 if the information relates to:
 - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
 - (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
 - (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 30, 1997, 75th Leg., R.S., ch. 1187, § 4, 1997 Tex. Gen. Laws 4575, 4580 *amended by* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)). We note, however, a driver's license issuing state does not constitute motor vehicle record information for purposes of section 552.130. Consequently, the sheriff may not withhold the redacted 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 driver's license class you have redacted, as well as the driver's license expiration date we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states "[n]otwithstanding 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." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "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 . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the sheriff must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.⁶

In summary, the sheriff must withhold the submitted 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. The sheriff must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff must withhold the named deputy’s date of birth we have marked under section 552.102(a) of the Government Code. If the deputy is a currently licensed peace officer as defined by article 2.12 and if the deputy paid for his cellular telephone service, the sheriff must withhold his cellular telephone number you have redacted under section 552.117(a)(2) of the Government Code. If, however, the deputy is not a currently licensed peace officer, his cellular telephone number may not be withheld under section 552.117(a)(2) of the Government Code. If the 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 of the Government Code, and the deputy paid for his cellular service, the sheriff must withhold the deputy’s cellular telephone number you have redacted under section 552.117(a)(1) of the Government Code. If, however, the deputy did not timely elect to keep his personal information confidential, the deputy’s cellular telephone number you have redacted must be released. The sheriff must withhold the driver’s license class you have redacted, as well as the driver’s license expiration date we have marked, under section 552.130 of the Government Code. The sheriff must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining responsive information must be released to the requestor.

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

⁶As previously noted, Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136, without the necessity of requesting an attorney general decision.

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 "Sean Nottingham".

Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bs

Ref: ID# 422456

Enc. Submitted documents

c: Requestor
(w/o enclosures)