ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2012

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

OR2012-01858

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# 444589.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for personnel records of two named deputies. You claim 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.

Initially, we note the requestor has agreed to exclude "social security numbers, driver's license numbers, and home address[es], or other individual information of that nature" from her request. Thus, such information is not responsive to the present request for information. The sheriff's office need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note some of the responsive information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-15936 (2011). We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-15936 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in the prior ruling, we conclude the sheriff's office must continue to rely on Open Records Letter No. 2011-15936 as a previous determination and withhold

or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address your argument against its release.

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 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 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 Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 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). Further, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required 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). However, this office also has found a legitimate public interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 542 at 5 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate concern to the public. The sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the sheriff's office has not demonstrated any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 550.065 of the Transportation Code. We note the submitted information contains ST-3 accident reports that were completed pursuant to chapter 550 of the Transportation Code and are confidential pursuant to section 550.065. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) 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 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 the sheriff's office with two of the required pieces of information. Thus, we find the sheriff's office must withhold the submitted ST-3 accident reports under section 552.101 in conjunction with section 550.065(b).

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."[1] Gov't Code § 552.102(a). The Texas Supreme Court 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 reviewed the remaining information, we have marked information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code 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 section 552.024 or section 552.1175 of the Government Code.[2] Gov't Code § 552.117(a)(2). The sheriff's office must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country and information related to a motor vehicle title or registration issued by an agency of this state or another state or country. *Id.* § 552.130. Accordingly, the

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[1]The 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).

[2]"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

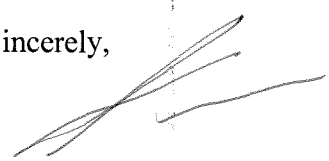
sheriff's office must withhold the information we have marked under section 552.130 of the Government Code. We note, however, the issuing state of a driver's license is not motor vehicle record information for purposes of section 552.130. Thus, the sheriff's office may not withhold the issuing state you have marked under section 552.130.

In summary, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2011-15936, the sheriff's office must continue to rely on our previous ruling and withhold or release the previously ruled upon information in accordance with that ruling. In conjunction with section 552.101 of the Government Code, the sheriff's office must withhold the information we have marked under common-law privacy and the ST-3 accident reports under section 550.065(b) of the Transportation Code. The sheriff's office must also withhold the information we have marked under sections 552.102, 552.117(a)(2), and 552.130 of the Government Code. The remaining responsive 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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

Ref: ID# 444589

Enc. Submitted documents

c: Requestor
(w/o enclosures)