



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2012

Mr. Robert J. Davis  
For Collin County  
Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis, L.L.P.  
8131 LBJ Freeway, Suite 700  
Dallas, Texas 75251

OR2012-05691

Dear Mr. Davis:

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# 451181 (ORR No. 1600-64551).

The Collin County Sheriff's Office (the "sheriff's office"), which you represent, received a request for information pertaining to the requestor, including the requestor's personnel file and training and certification records, the recording of a specified Professional Standards Section investigation interview and any written report or findings pertaining to the interview, and the requestor's commission for peace officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, 552.1175, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your statement that some of the submitted information, specifically, the submitted audio recording of the requestor's interview, was reviewed by the requestor's father during a meeting with the Sheriff to discuss the requestor's employment by, and resignation from, the sheriff's office. Thus, the sheriff's office has previously released some of the submitted information to the public. The Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential

under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). *But see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to section 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to section 552.108). Accordingly, the sheriff's office may not withhold previously released information unless its release is expressly prohibited by law or the information is confidential by law. You raise sections 552.101, 552.103, 552.117, 552.1175, and 552.119 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 663 (1999) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, to the extent the sheriff's office previously released any of the submitted information to a member of the public, the sheriff's office may not now withhold any such information under section 552.103 of the Government Code. You also contend portions of the information at issue must be withheld under sections 552.101, 552.117, 552.1175, and 552.119 of the Government Code, which make information confidential under law. Therefore, we will consider your arguments under these sections with respect to information that has been previously released.

Next, we note portions of the submitted information are subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; and

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). This information consists of a completed investigation and a completed employee performance appraisal report subject to section 552.022(a)(1), and court-filed documents subject to section 552.022(a)(17). You seek to withhold the information at issue under section 552.103 of the Government Code. However, as previously noted, section 552.103 is a discretionary exception to disclosure that protect a governmental

body's interests and may be waived. *See Dallas Morning News*, 4 S.W.3d at 475-76; ORD 663; *see also* ORD 665 at 2 n.5. As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, because the information at issue, which we have marked, is subject to 552.022, it may not be withheld under section 552.103. However, we will address the remaining exceptions you raise for the information subject to section 552.022, as well as the exceptions you raise for the information not subject to section 552.022.

Next, we address your claim under section 552.103 of the Government Code for the information not subject to section 552.022, as it is potentially the most encompassing exception you raise for this information. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See id.* Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental

body from an attorney for a potential opposing party.<sup>1</sup> *See* Open Records Decision No. 555 (1990); *see also* ORD 518 at 5 (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You generally assert the information at issue is subject to section 552.103, and state the request for information, as well as language used by the requestor in her resignation letter, indicate the requestor has taken “distinct and concrete steps toward litigation.” However, you have not informed us, nor do the submitted documents indicate, that the requestor has taken any concrete steps toward the initiation of litigation. *See* Gov’t Code § 552.301(e)(1)(A); ORD 331. Further, you have failed to provide any arguments demonstrating that actual litigation is realistically contemplated by the sheriff’s office. Thus, we find you have not established that litigation was reasonably anticipated on the date the sheriff’s office received the request for information. Accordingly, the sheriff’s office has failed to demonstrate the applicability of section 552.103 of the Government Code to the information at issue, and it may not be withheld on that basis.

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 exception encompasses information that other statutes make confidential. You claim section 552.101 in conjunction with the Americans with Disabilities Act of 1990 (the “ADA”). *See* 42 U.S.C. §§ 12101 *et seq.* Title I of the ADA requires information about the medical conditions and medical histories of applicants or employees be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. Information obtained in the course of a “fitness for duty examination,” conducted to determine whether an employee is still able to perform the essential functions of his or her job, is to be treated as a confidential medical record as well. *See* 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). The federal Equal Employment Opportunity Commission (the “EEOC”) has determined medical information for purposes of the ADA includes “specific information about an individual’s disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual.” *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney,

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<sup>1</sup>In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Although you contend some of the submitted information is confidential under the ADA, we find you have not demonstrated any of the information falls within the scope of the federal law. *See Ballard v. Healthsouth Corp.*, 147 F. Supp. 2d 529, 534 (N.D. Tex. 2001) (information not confidential under ADA when not obtained by an employer as a result of job-related medical examination); *Wiggins v. DaVita Tidewater, LLC*, 451 F. Supp.2d 789, 801-02 (E.D. Va. 2006) (information not confidential as medical information under ADA if not obtained as part of employee health program or from medical examinations conducted at employer's direction). We therefore conclude the sheriff's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the ADA.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004-.005. Section 159.002(c) also requires any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. ORD 598. In this instance, you inform us the sheriff's office has not received proper consent to release the records at issue. Accordingly, the requestor's medical records, which we have marked, may only be released in accordance with the MPA.

Section 552.101 also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). *See* Gov't Code § 411.083(a). CHRI means "information collected about a person by a criminal

justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* ORD 565. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code subchapter F of chapter 411. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Upon review, we find the sheriff’s office must withhold the information we have marked under section 552.101 in conjunction with chapter 411 and federal law.<sup>2</sup> However, we find you have not established any of the remaining information is confidential under section 411.083, and the sheriff’s office may not withhold it under section 552.101 on that ground.

We note the remaining information contains the requestor’s W-4 forms. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential for purposes of section 552.101 of the Government Code. Attorney General Opinion H-1274(1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993).

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<sup>2</sup>We note the requestor can obtain her own CHRI from DPS. Gov’t Code § 411.083(b)(3).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer's designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(I) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under the federal Freedom of Information Act). Accordingly, the sheriff's office must release the W-4 forms to the requestor pursuant to section 6103 of title 26 of the United States Code.

The remaining information also contains L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms, which are required by the Texas Commission on Law Enforcement Officers Standards and Education ("TCLEOSE"). Section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code, provides in relevant part as follows:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

- (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
- (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). We agree these declarations, which we have marked, are confidential under section 1701.306 of the Occupations Code, and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCLEOSE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to [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.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release information submitted under this subchapter.

*Id.* § 1701.454. The remaining information contains an F-5 Report of Separation of Licensee report. The F-5 report states the officer at issue resigned or was terminated for reasons other than substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold the submitted F-5 report, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 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 § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). We note the requestor has a right of access to her own fingerprints. *See id.* § 560.002(1). Accordingly, we find that the sheriff's office must release the requestor's fingerprints, which we have marked, to the requestor pursuant to section 560.002(1)(A).

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *See id.* at 683.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under

investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released along with the statement of the accused under *Ellen*, but the identities of the victim and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. We note that supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context. Further, since common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance, the identity of the individual accused of sexual harassment is not protected from public disclosure. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

We find *Ellen* is applicable to portions of the submitted information. We note the information at issue contains an adequate summary of the investigation. In addition, we note the information at issue contains a recorded audio statement by the individual accused of sexual harassment. We note the summary and audio statement reveal the identity of the alleged victim of sexual harassment and the witnesses in the investigation. Therefore, the summary and the statement of the accused person are not confidential under common-law privacy and must be released. However, in releasing this information, the sheriff's office must withhold the identifying information of the victim and witnesses in the summary, which we have marked, as well as the identifying information contained in the recorded audio statement under section 552.101 of the Government Code in conjunction with common-law privacy and the decision in *Ellen*. The sheriff's office must withhold the remaining information at issue, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy and the decision in *Ellen*.

We note common-law privacy also protects other types of information. 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 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office also must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). You assert the remaining portions of the summary and the accused's recorded statement are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law informer's privilege. The common-law informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

In this instance, you claim the information at issue reveals the identities of witnesses and informers in the course of an internal investigation involving the requestor. However, you have not informed us of any particular law or laws alleged to have been violated, nor demonstrated that any alleged violations would result in a civil or criminal penalty. Thus, we find that the sheriff's office has not met its burden in adequately demonstrating that the informer's privilege is applicable to the information at issue. *See* Gov't Code § 552.301(e)(1)(A); Open Records Decision Nos. 542 (1990) (concluding that Act places on governmental body burden of establishing why and how exception applies to requested information), 532 (1989), 515, 252 (1980). Consequently, the sheriff's office may not withhold any of the remaining information pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege.

Portions of the remaining information may be subject to section 552.117 of the Government Code. Section 552.117 provides in relevant part the following:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, emergency contact information, or social security number of the following person or that reveals whether the person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable[.]

Gov't Code § 552.117(a)(1)-(2). 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).

Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request confidentiality under section 552.024. Thus, to the extent the employee whose information is at issue timely requested confidentiality for his or her information under section 552.024 of the Government Code, the information we have marked must be withheld on the basis of section 552.117(a)(1). We note that the remaining information also contains personal information of the requestor, who is a former peace officer employed by the sheriff's office. Although the sheriff's office would ordinarily be required to withhold the requestor's personal information under section 552.117(a)(2), this exception protects personal privacy. The requestor has a right of access to her own private information under section 552.023 of the Government Code. *See Gov't Code § 552.023.* Therefore, the sheriff's office may not withhold the requestor's personal information in this instance under section 552.117(a)(2) of the Government Code.

You assert some of the remaining information is excepted from disclosure under section 552.1175 of the Government Code. Section 552.1175 applies to information pertaining to peace officers that the sheriff's office does not hold in an employment context and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). The remaining information is held by the sheriff's office in an employment context. We also note the remaining information does not consist of a home address or telephone number, emergency contact information, social security number,

or family member information of a peace officer. Thus, the sheriff's office may not withhold any of the remaining information under section 552.1175 of the Government Code.

You also raise section 552.119 of the Government Code for the remaining information, which provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

*Id.* § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find that none of the remaining information constitute photographs, the release of which would endanger the life or physical safety of the peace officer depicted. Therefore the sheriff's office may not withhold any of the remaining information pursuant to section 552.119 of the Government Code.

We note portions of the remaining information are subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by a Texas agency, or an agency of another state or country, is excepted from public release.<sup>3</sup> *Id.* § 552.130(a)(1), (2). The sheriff's office must withhold the driver's license number we have marked under section 552.130 of the Government Code.

We also note the remaining information contains an e-mail address of a member of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470.

of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the sheriff’s office must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release under section 552.137(b).

In summary, to the extent the sheriff’s office previously released any of the submitted information to a member of the public, the sheriff’s office may not now withhold any such information under section 552.103 of the Government Code. The sheriff’s office may only release the medical records we have marked in accordance with the MPA. In conjunction with section 552.101 of the Government Code, the sheriff’s office must withhold: (1) the information we have marked under chapter 411 of the Government Code and federal law; (2) the L-2 and L-3 declaration forms we have marked under section 1701.306 of the Occupations Code; (3) the F-5 report we have marked under section 1701.454 of the Occupations Code; and (4) the information we have marked under common-law privacy. The sheriff’s office must release the summary of the investigation and the accused individual’s recorded statement; however, in releasing this information, the sheriff’s office must withhold the identifying information of the alleged victim and witnesses in the investigation at issue under section 552.101 of the Government Code in conjunction with common-law privacy and the decision in *Ellen*. To the extent the employee whose information is at issue timely elected confidentiality under section 552.024 of the Government Code, the sheriff’s office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The sheriff’s office must withhold the information we have marked under section 552.130 of the Government Code. Unless the owner of the e-mail address at issue affirmatively consents to release, the sheriff’s office must withhold the e-mail address we have marked under section 552.137 of the Government Code. The sheriff’s office must release the remaining information.<sup>4</sup>

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<sup>4</sup>We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Because such information may be confidential with respect to the general public, if the sheriff’s office receives another request for this information from another individual, it should again seek a ruling from this office. *See* Gov’t Code §§ 552.301, .302. We also note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306(b) of the Occupations Code, and e-mail addresses of member’s of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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](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,

A handwritten signature in black ink that reads "Cynthia G. Tynan". The signature is written in a cursive, flowing style.

Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 451181

Enc. Submitted documents

c: Requestor  
(w/o enclosures)