



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 25, 2012

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
301 Jackson St., Suite 728
Richmond, Texas 77469

OR2012-05915

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# 451573.

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

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]ll information 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). However, in this instance, it is unclear whether the named individual resigned due to a substantiated incident of excessive force or violations of the law other than traffic offenses. Thus, if the named individual did not resign due to a substantiated incident of excessive force or violations of the law other than traffic offenses, the sheriff's office must withhold the F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, if the named individual did resign due to a substantiated incident of excessive force or violations of the

law other than traffic offenses, the sheriff's office may not withhold the F-5 forms under section 552.101 on this basis.

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's office 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 information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

We note you have redacted portions of the submitted information. However, you do not assert, nor does our review of the records indicate, you have been authorized to withhold the redacted date of birth without seeking a ruling from this office.¹ Section 552.102(a) of the Government Code exempts 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) exempts 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.*, 354 S.W.3d 336, 348 (Tex. 2010). The sheriff's office must withhold the named individual's date of birth we have marked under section 552.102(a) of the Government Code.

¹Generally, 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's office should refrain from redacting any information it submits to this office in seeking an open records ruling, unless the sheriff's office has been authorized to make such redactions.

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).

The redacted information also includes the named individual's home addresses, telephone numbers, pager number, social security number, and family member 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).³ 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 elects confidentiality under sections 552.024 and 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). Additionally, section 552.117(a)(2) encompasses a peace officer's personal pager number, provided the pager service is not paid for by a governmental body. *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). In this instance, it is unclear whether the named individual is currently a licensed peace officer as defined by article 2.12. Thus, if the named individual is a currently licensed peace officer as defined by article 2.12, the sheriff's office 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, unless the pager service is paid for by a governmental body, the sheriff's office must withhold the named individual's pager number you have redacted and we have marked under section 552.117(a)(2) of the Government Code. If, however, the named individual is not a currently licensed peace officer, his personal information may not be withheld under section 552.117(a)(2) of the Government Code.

If the named individual 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, 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 of the Government Code. *See* Gov't Code § 552.117(a)(1). 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 named individual 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's office must withhold his marked home addresses, home

³Open 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.

⁴"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

telephone numbers, emergency contact information, family member information, and social security number under section 552.117(a)(1) of the Government Code. Similarly, unless the pager service is paid for by a governmental body, the sheriff's office must withhold the named individual's marked pager number under section 552.117(a)(1) of the Government Code. If, however, the named individual is no longer a licensed peace officer and did not timely elect to keep his personal information confidential, his marked personal information may not be withheld under section 552.117(a)(1).⁵

The remaining redacted information consists of the named individual's driver's license number and the driver's license issuing state. We presume you have redacted this information under section 552.130(c) of the Government Code.⁶ Section 552.130 provides information relating to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1), (2). Section 552.130, however, does not except a driver's license issuing state. Consequently, the sheriff's office may not withhold the redacted driver's license issuing state under section 552.130. The sheriff's office must, however, withhold the driver's license number you have redacted, as well as the driver's license class, driver's license expiration date, and the license plate number we have marked under section 552.130 of the Government Code.

In summary, if the named individual did not resign due to a substantiated incident of excessive force or violations of the law other than traffic offenses, the sheriff's office must withhold the F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the named individual's date of birth we have marked under section 552.102(a) of the Government Code. If the named individual is a currently licensed peace officer as defined by article 2.12 of the Texas Code of Criminal Procedure, the sheriff's office 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, unless the pager service is paid for by a governmental body, the sheriff's office must withhold the named individual's pager number you have redacted and we have marked under section 552.117(a)(2) of the Government Code. If the named individual is no longer a licensed peace officer as defined by article 2.12, then to the extent

⁵Regardless 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).

⁶Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

he timely elected confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold his marked home addresses, home telephone numbers, emergency contact information, family member information, and social security number under section 552.117(a)(1) of the Government Code. Similarly, unless the pager service is paid for by a governmental body, the sheriff's office must withhold the named individual's marked pager number under section 552.117(a)(1) of the Government Code. The sheriff's office must withhold the driver's license number you have redacted, as well as the driver's license class, driver's license expiration date, and the license plate number we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.

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/akg

Ref: ID# 451573

Enc. Submitted documents

c: Requestor
(w/o enclosures)