



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2012

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

OR2012-06576

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# 452805.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for the personnel record of a named sheriff's office deputy. 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 you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or has statutory authorization to withhold the information in question without requesting a decision under the Act. *See* Gov't Code §§ 552.301(a), (e)(1)(D). You have redacted information pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001), which authorizes all governmental bodies to withhold certain information relating to a peace officer under section 552.117(a)(2) of the Government Code without requesting a decision. *See* ORD 670 at 6-7. You have redacted a driver's license number under section 552.130(c)

of the Government Code.¹ Additionally, you have redacted e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).² You do not assert, nor do our records indicate, the sheriff's office is authorized to withhold the redacted driver's license issuing state, date of birth, and telephone numbers of personal references who are private citizens, without first seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). As such, these types of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the sheriff's office should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is subject to a previous determination under section 552.301 or statute that authorizes governmental bodies to withhold information without seeking a decision from this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 1701.454 of the Occupations Code. Section 1701.454 governs the public availability of information submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides:

- (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.

¹ Section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d) (entitling requestor to appeal governmental body's decision to withhold information pursuant to section 552.130(c) to attorney general), .130(e) (requiring governmental body that withholds information pursuant to section 552.130(c) to provide notice to requestor).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Occ. Code § 1701.454. The submitted information includes F-5 Separation of Licensee forms that were submitted to TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. In this instance, the submitted F-5 forms do not reflect the named officer to whom the forms apply was terminated due to 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 forms, 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 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 determined certain types of personal financial information are protected by common-law privacy. Financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).* Upon review, we find the sheriff's office must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. None of the remaining information is highly intimate or embarrassing of no legitimate public interest. Thus, the sheriff's office may not withhold any of the remaining information under section 552.101 on the basis of 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.”³ 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

³The 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).*

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.⁴ 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 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 for redaction under section 552.130.

Section 552.136 of the Government Code provides that “[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.” *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the sheriff's office must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

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). *Id.* § 552.137(a)-(c). The e-mail address we have marked is not of the types specifically excluded by section 552.137(c) of the Government Code. 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 affirmatively consents to disclosure.

In summary, the sheriff's office must withhold (1) the F-5 forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the

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

Occupations Code, (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, and (3) the information we have marked under sections 552.102(a), 552.117(a)(2), 552.130, and 552.136 of the Government Code. The sheriff's office must also withhold the e-mail address we have marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its release. The remaining submitted 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/ag

Ref: ID# 452805

Enc. Submitted documents

c: Requestor
(w/o enclosures)