



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2012

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

OR2012-09032

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# 456110.

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

We understand 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. In addition, you have redacted a information subject to section 552.130(a)(1) under section 552.130(c) of the Government Code¹ as well as Texas license plate numbers under section 552.130(a)(2) of the Government Code and e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision

¹Section 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).

No. 684 (2009).² However, we note you have also redacted a date of birth. You do not assert, nor does our review of the records indicate, you have been authorized to withhold that information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, this 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. 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 is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 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.

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 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

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code and 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.

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.*, 354 S.W.3d 336 (Tex. 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.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.

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).

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

Section 552.130 excepts from disclosure information that relates 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. *Id.* § 552.130(a)(1)-(2). 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 under section 552.130.

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 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), and 552.130 of the Government Code. 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bs

Ref: ID# 456110

Enc. Submitted documents

c: Requestor
(w/o enclosures)