



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 14, 2012

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County Attorney's Office
William B. Travis Building
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2012-09190

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# 456238.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident involving the requestor's client, including the personnel file of a named officer involved in the incident. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We note you have redacted e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the submitted information in Exhibit C contains the fingerprints of the requestor's client. 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 section 560.003

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 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, “[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). Thus, the requestor has a right of access to her client’s fingerprints under section 560.002(1)(A). *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Although you also seek to withhold the marked fingerprints under section 552.108 of the Government Code, we note the general exceptions to disclosure found in the Act are not applicable to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the sheriff’s office must release the fingerprints we have marked in Exhibit C pursuant to section 560.002.

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 the Texas Commission on Law Enforcement Officers Standards and Education (“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.

Occ. Code § 1701.454. Exhibit E consists of F-5 Report of Separation of Licensee reports. The F-5 reports state 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 reports in Exhibit E, 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. *See 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 satisfied. *Id.* at 681-82. This office has found 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). This office has also found 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) (finding personal financial information to include choice of particular insurance carrier), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find some of the information in Exhibit D is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

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.

You raise section 552.108 of the Government Code for the remaining information in Exhibit C. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue pertains to a pending criminal prosecution with the Fort Bend County District Attorney's Office. Based on this representation and our review, we conclude the release of the remaining information in Exhibit C would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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, 480 (1987), 470 (1987).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). In this instance, the submitted information includes computer-assisted-dispatch ("CAD") records. In Open Records Decision No. 649 (1996), this office concluded information contained in a CAD report is substantially the same as basic information. *See* ORD 649 at 3; *see also* Open Records Decision No. 394 at 3 (1983) (there is no qualitative difference between information contained in radio cards or radio logs and front-page offense report information expressly held to be public in *Houston Chronicle*; thus, such information is generally public). Therefore, with the exception of the basic information, the sheriff's office may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code.⁴

We note you have redacted portions of the submitted information, including the named officer's personal 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).⁵ We also note the remaining information includes information pertaining to other officers employed by the sheriff's office. 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.⁶ Gov't Code § 552.117(a)(2). Additionally, section 552.117(a)(2) encompasses a peace officer's personal cellular telephone number, provided the cellular service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance, it is unclear whether the individuals at issue are currently licensed peace officers as defined by article 2.12. Thus, if the individuals at issue are currently licensed peace officers as defined by article 2.12, the sheriff's office must withhold the individuals' personal information you have redacted, and the additional information we have marked, under section 552.117(a)(2) of the Government Code. Likewise, unless the cellular telephone services are paid for by a governmental body, the sheriff's office must withhold the cellular telephone numbers we have marked under section 552.117(a)(2) of the Government Code. If, however, the

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁵Open 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.

⁶"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

individuals at issue are not currently licensed peace officers, their personal information may not be withheld under section 552.117(a)(2) of the Government Code.

If the individuals whose information is at issue are no longer licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts the same information for 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). Section 552.117 also encompasses a personal cellular telephone, unless the cellular service is paid for by a governmental body. *See* ORD 506 at 5–7. 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 individuals at issue are no longer licensed peace officers as defined by article 2.12, then to the extent they timely elected confidentiality under section 552.024, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Similarly, unless the cellular telephone services are paid for by a governmental body, the sheriff's office must withhold the individuals' marked cellular telephone numbers under section 552.117(a)(1) of the Government Code. If, however, the individuals at issue did not timely elect to keep their personal information confidential, their marked personal information may not be withheld under section 552.117(a)(1).

We note that the remaining information includes information that may be subject to section 552.1175 of the Government Code, which applies to information pertaining to peace officers that the city 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). We have marked addresses and telephone numbers that may belong to licensed peace officers not employed by the sheriff's office. The sheriff's office must only withhold the information we marked if it consists of the home addresses and telephone numbers of licensed peace officers and the peace officers elect to restrict access to the information pertaining to them in accordance with section 552.1175(b); however, the marked cellular telephone numbers may not be withheld if the cellular services are paid for with public funds. If the information does not consist of the home addresses and telephone numbers of peace officers not employed by the sheriff's office or no elections are made, the sheriff's office may not withhold the information we have marked under section 552.1175.

You have also redacted information that consists of a driver's license number, class, expiration date, restrictions, and the driver's license issuing state. We presume you have redacted this information under section 552.130(c) of the Government Code.⁷ Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See 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 information you have redacted, and the license plate numbers we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office must release the marked fingerprints in Exhibit C under section 560.002 of the Government Code. The sheriff's office must withhold the marked F-5 reports in Exhibit E under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code, and the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.102(a) of the Government Code. With the exception of basic information, the sheriff's office may withhold the remaining information in Exhibit C under section 552.108(a)(1) of the Government Code. If the individuals at issue are currently licensed peace officers as defined by article 2.12 of the Texas Code of Criminal Procedure, the sheriff's office must withhold the named individual's personal information you have redacted, and the additional information we have marked, under section 552.117(a)(2) of the Government Code. Likewise, unless the cellular telephone services are paid for by a governmental body, the

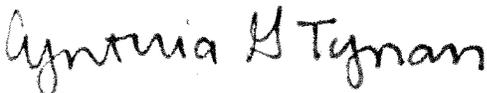
⁷Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental 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).

sheriff's office must withhold the cellular telephone numbers we have marked under section 552.117(a)(2) of the Government Code. If the individuals at issue are no longer licensed peace officers as defined by article 2.12, then to the extent they timely elected confidentiality under section 552.024, the sheriff's office must withhold their marked personal information under section 552.117(a)(1) of the Government Code. Similarly, unless the cellular telephone services are paid for by a governmental body, the sheriff's office must withhold the individuals' marked cellular telephone numbers under section 552.117(a)(1) of the Government Code. If the information we have marked pertains to licensed peace officers and the peace officers elect to restrict access to the marked information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may not be withheld if the cellular services are paid for with public funds. With the exception of the driver's license issuing state, the sheriff's office must withhold the driver's license information you have redacted, as well as the additional information 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/bs

Ref: ID# 456238

Enc. Submitted documents

c: Requestor
(w/o enclosures)