



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2012

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

OR2012-16616

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# 469932.

The Fort Bend County Attorney's Office (the "county attorney's office") received a request for information pertaining to a named deputy. You claim some of the requested 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 the requestor excluded from her request the social security number, Texas driver's license number, and home addresses of the named deputy, which you have redacted from the submitted documents. It appears the county attorney's office has also redacted a personal e-mail address under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009),¹ motor vehicle record information pursuant to section 552.130 of the Government Code,² account and insurance policy numbers pursuant

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an email address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

²Section 552.130(c) allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *Id.* § 552.130(d), (e).

to section 552.136 of the Government Code,³ and information under section 552.117(a)(2) of the Government Code pursuant to the previous determination issued to all governmental bodies in Open Records Decision No. 670 (2001).⁴ However, you have also redacted information, including dates of birth, that the county attorney's office has not been authorized to withhold without seeking a ruling from this office. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of this information, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. See Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), 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." Gov't Code § 552.101. This section encompasses information other statutes make confidential, such as section 1701.454 of the Occupations Code, which 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 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. You inform us the submitted information contains F-5 Separation of Licensee forms that were submitted to TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. The submitted F-5 forms do not reflect the officer at issue was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the county attorney'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. However, we find none of

³Section 552.136(c) of the Government Code authorizes a governmental body to redact the information described in section 552.136(b) without the necessity of seeking an attorney general decision. See Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). See *id.* § 552.136(d), (e).

⁴A government body may withhold a peace officer's home address and telephone number, personal cell phone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. See ORD 670; Gov't Code § 552.147(b).

the remaining information is confidential under section 1701.454, and the county attorney's office may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (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). The types of information considered intimate or 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. *Id.* at 683. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). Some of the submitted information is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the county attorney's office must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. Upon review, however, we find the remaining information is not confidential under common-law privacy, and the county attorney's office may not withhold it under section 552.101 on that ground.

The submitted documents include information that is excepted from disclosure under section 552.102(a) of the Government Code.⁵ Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently 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). The county attorney's office must withhold the information we have marked 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.⁶ Gov't Code § 552.117(a)(2). The county

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); see, e.g., Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

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

attorney's office must withhold the information we have marked pertaining to the officer at issue under section 552.117(a)(2) of the Government Code.

We note some of the information at issue may be excepted under section 552.1175 of the Government Code. Section 552.1175(b) provides in part the following:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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(b). The submitted documents contain information pertaining to an officer who does not work for the department. If this individual is currently a licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information, which we have marked, under section 552.1175.

To conclude, the county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code and the information we have marked under common-law privacy. The county attorney's office must also withhold the information we have marked under section 552.102(a) and section 552.117(a)(2) of the Government Code. The county attorney's office must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is currently a licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b). The county attorney's office must provide the remaining information to the requestor, including the information we have marked for release.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 469932

Enc. Submitted documents

c: Requestor
(w/o enclosures)