



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

November 5, 2012

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2012-17663

Dear Ms. Lentz:

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# 469998.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all records relating to a named deputy and the sheriff's office's policies and procedures regarding the operation and maintenance of in-car video recorders. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.122, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to the request for the policies and procedures regarding in-car video recorders. To the extent such information existed on the date the sheriff's office received the request, we presume the sheriff's office has released it. If not, the sheriff's office must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

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 protected by other statutes, including section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form in this instance would be “for purposes other than enforcement” of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form, which you have marked, is confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Chamberlain v. Kurtz*, 589 F.2d 827, 840-41 (5th Cir. 1979); *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the sheriff’s office must withhold the W-4 form it has marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 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 type 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 found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law

privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has found information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest, and, therefore, generally not protected from disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate public concern. Therefore, 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. However, we find the sheriff's office has failed to demonstrate any of the remaining information it seeks to withhold is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

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." Gov't Code § 552.102(a). The Texas Supreme Court has 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the sheriff's office must withhold the date of birth you have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code exempts 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. Gov't Code § 552.117(a). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We note section 552.117 applies only to information held by a governmental body in an employment context. Upon review, we find the sheriff's office must withhold the personal information of licensed peace officers we have marked under section 552.117(a)(2) of the Government Code, including cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. However, we find none of the remaining information consists of the home addresses, home telephone numbers, emergency contact information, social security number, or family member information of a

peace officer. Thus, none of the remaining information may be withheld under section 552.117(a)(2) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who timely requests this information be kept confidential under section 552.024. 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. *See* Gov't Code § 552.024(b). Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. As noted above, section 552.117 only applies to information a governmental body holds in an employment context. Upon review, we find none of the remaining information consists of the home address and telephone number, emergency contact information, social security number, or family member information of a current or former official or employee of the sheriff's office. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.117(a)(1) of the Government Code.

Section 552.1175 protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure" and individuals employed by "a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters." *Id.* § 552.1175(a)(1), (5). Upon review, we find the sheriff's office must withhold the information we have marked under section 552.1175 if the individuals to whom this information pertains are currently licensed peace officers or are employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes criminal law or child protective services matters, and the individuals elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. However, we note the remaining information you seek to withhold under section 552.1175 does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information of any individual whose information is protected under section 552.1175. *See id.* § 552.1175(a). Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.1175.

Section 552.122 of the Government Code exempts from public disclosure “[a] test item developed by a . . . governmental body[.]” *Id.* § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated,” but does not encompass evaluations of an employee’s overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4–5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

You seek to withhold the sheriff’s Entrance Level Examination under section 552.122 of the Government Code. You explain the exam tests individuals who apply for a position with the sheriff. We understand the exam is used on a continuing basis and release of this information would compromise the effectiveness of future exams. Having reviewed the submitted information and your arguments, we find the information we have marked consists of “test items” for purposes of section 552.122(b), and the answers reveal the questions themselves. We therefore conclude the sheriff may withhold the exam information we have marked under section 552.122 of the Government Code. We note the remaining information you seek to withhold under section 552.122 consists of multiple choice scantron sheets that do not reveal any test questions. Therefore, the remaining information you have marked under section 552.122 may not be withheld on that basis.

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, and personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1)-(3). We note a portion of the information you have marked does not consist of motor vehicle record information. Accordingly, with the exception of the information we have marked, the sheriff’s office must withhold the information it has marked and the information we have marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], 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). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Accordingly, the sheriff’s office must withhold the insurance policy number it has marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code exempts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses you have marked are not excepted by subsection (c). Accordingly, the sheriff’s office must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release. *See id.* § 552.137(b).

In summary, the sheriff’s office must withhold the submitted I-9 form under section 552.101 in conjunction with section 1324a of title 8 of the United States Code. The sheriff’s office must withhold the W-4 form it has marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The sheriff’s office must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the information it has marked under section 552.102(a) of the Government Code. The sheriff’s office must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code, including cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. If the individuals whose information is at issue are currently licensed peace officers or are employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes criminal law or child protective services matters and elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the sheriff’s office must withhold the information we have marked under section 552.1175. The sheriff’s office may withhold the information we have marked under section 552.122. With the exception of the information we have noted, the sheriff’s office must withhold the information it has marked and the information we have marked under section 552.130. The sheriff’s office must withhold the information it has marked under section 552.136. The sheriff’s office must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.<sup>1</sup> The remaining 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

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<sup>1</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, an I-9 form under section 552.101 in conjunction with section 1324a of title 8 of the United States Code, and direct deposit authorization forms under section 552.101 in conjunction with common-law privacy, without the necessity of requesting an attorney general decision.

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/dls

Ref: ID# 469998

Enc. Submitted documents

c: Requestor  
(w/o enclosures)