



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2013

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

OR2013-01990

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# 477785.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for the complete personnel file pertaining to a named officer. You claim portions of the submitted information are 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 sheriff's office has 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. *See* Gov't Code § 552.301(a), (e)(1)(D). We understand the sheriff's office has redacted a driver's license number under section 552.130 of the Government Code, an insurance policy number under section 552.136 of the Government Code, and a social security number under

section 552.147 of the Government Code.¹ We further understand the sheriff's office has redacted a Texas license plate number as permitted by Open Records Decision No. 684 (2009).² You have also redacted personal information of the named peace officer. This office issued a previous determination in Open Records Decision No. 670 (2001) authorizing 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 employed by the governmental body under section 552.117(a)(2) of the Government Code without requesting a decision. *See* ORD 670 at 6-7; *see also* Gov't Code § 552.117(a)(2). In this instance it is unclear whether the former officer is still a licensed peace officer. In the event the former officer is no longer licensed, section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See id.* § 552.024(c)(2). We have marked additional information that is subject to section 552.117 of the Government Code.

You have also redacted information pertaining to employees at the Harris County Sheriff's Office. Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), the home addresses and telephone numbers, emergency contact information, social security number, and family member information of peace officers, 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

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) of the Government Code, such as driver's license numbers, without the necessity of seeking a decision from the attorney general. 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). Similarly, section 552.136(c) of the Government Code authorizes a governmental body to redact information protected by section 552.136(b) of the Government Code without requesting a decision. *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

²Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2) of the Government Code, without requesting an attorney general decision.

§ 552.1175(b), (f). We are unable to determine from the information provided which, if any, of the individuals whose information you redacted are currently licensed peace officers. We note the application of section 552.1175 will only apply in the event these individuals are currently licensed as peace officers and elect to restrict access to the information in accordance with section 552.1175(b).

The sheriff's office has also redacted additional information, including vehicle identification numbers, a date of birth, the city and county of birth, and the names, home addresses and telephone numbers of private citizens. You do not assert, nor does our review of our records indicate, the sheriff's office has been authorized to withhold any of this remaining information you redacted without seeking a ruling from this office. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). 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 unable to discern the nature of the some of the remaining redacted information, the sheriff's office has failed to comply with section 552.301, and such information is presumed public under section 552.302. See Gov't Code §§ 552.301(e)(1)(D), .302. Thus, we conclude that the sheriff's office must release the information we have marked. We will, however, address the remaining redacted information, as we are able to discern the nature of this information.

We note the submitted information contains two ST-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. Section 552.101 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 of the Government Code encompasses section 550.065 of the Transportation Code. This section provides that, except as provided by subsection (c), accident reports are privileged and confidential. Transp. Code § 550.065(b). Section 550.065(c)(4) of the Transportation Code, however, requires the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). In this instance, the requestor has not provided the sheriff's office with two of the three requisite pieces of information specified by the statute. Accordingly, the sheriff's office must withhold the submitted ST-3 accident report forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

You claim section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. 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 elements of the test must be established. *Id.* at 681-82. This office has determined common-law privacy encompasses certain types of personal financial information. 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) (“In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the 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). We conclude the personal financial information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. 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. None of the remaining information is highly intimate or embarrassing information of no legitimate public interest, and may not be withheld on that 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.” Gov’t Code § 552.102(a). The Texas Supreme Court has 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). Upon review, we find the sheriff’s office must withhold the date of birth we have marked under section 552.102 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]” Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the sheriff’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, if the individual at issue is currently a licensed peace officer as defined by article 2.12, then the sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, if the individual at issue is no longer a licensed peace officer, the sheriff’s office must withhold the information we marked under section 552.117(a)(1) of the Government Code, to the extent the employee timely elected to keep such information confidential under section 552.024. The sheriff’s office must also withhold: (1) the submitted ST-3 accident report forms we marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the date of birth we have

marked under section 552.102 of the Government Code; and (4) the information we have marked under section 552.130. 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 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 477785

Enc. Submitted documents

c: Requestor
(w/o enclosures)