



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2013

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

OR2013-07457

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# 486364.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for the personnel file of two named sheriff's office deputies. You claim that 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.

Initially, we note the requestor specifically excluded from his request any and all home addresses, telephone numbers, family member information, social security numbers, driver's license numbers, and license plate numbers in the submitted information, some of which you have redacted.<sup>1</sup> As the requestor has excluded these types of information, none of these types of information are responsive to the instant request. This ruling does not address the public availability of non-responsive information, nor is the sheriff's office required to release non-responsive information to this requestor. It appears the sheriff's office has also redacted a personal e-mail address under section 552.137 of the Government Code pursuant to

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<sup>1</sup>We note that we have marked the type of family member information that is not responsive to the request, in addition to the family member information you have redacted.

Open Records Decision No. 684 (2009)<sup>2</sup> and an insurance policy number pursuant to section 552.136 of the Government Code.<sup>3</sup> However, you have also redacted information, including dates of birth, that the sheriff'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 the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, 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 B consists of an F-5 ("Report of Separation of Licensee") report pertaining to a former deputy who resigned from the sheriff's office. The report does not indicate the individual at issue resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. You state this form was submitted to TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. Therefore, the sheriff's office must withhold Exhibit B under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

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<sup>2</sup>Open 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.

<sup>3</sup>Section 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).

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 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. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). 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 information in Exhibit C is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the sheriff'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 in Exhibit C is not confidential under common-law privacy, and the sheriff'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.<sup>4</sup> 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 sheriff's office must withhold the date of birth we have marked, in addition to the date of birth you have redacted, under section 552.102(a) of the Government Code.

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, or a 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. Upon review, we find the sheriff's office must withhold the motor vehicle record information that we have marked, in addition to the information you have redacted, 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,

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<sup>4</sup>The 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).

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 for purposes of section 552.136. Therefore, the sheriff’s office must withhold the insurance policy number we have marked, in addition to the insurance policy number you have redacted, under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See* Gov’t Code § 552.137(a)-(c). The sheriff’s office must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure.

In summary, the sheriff’s office must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff’s office must also withhold the information we have marked in Exhibit C under: (1) section 552.101 of the Government Code in conjunction with common-law privacy; (2) section 552.102 of the Government Code; (3) section 552.130 of the Government Code; (4) section 552.136 of the Government Code; and (5) section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. 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](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/tch

Ref: ID# 486364

Enc. Submitted documents

c: Requestor  
(w/o enclosures)