



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2013

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

OR2013-08906

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# 488615.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for the requestor's complete application record for a specified position, including the reason for denial and any findings or notes. You claim the submitted information is excepted from disclosure under sections 552.101, 552.122, 552.130, 552.137, and 552.147 of the Government Code. Additionally, you state release of this information may implicate the interests of third parties. Accordingly, you have notified the interested third parties of the request for information and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (providing interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor has excluded from his request social security numbers, driver's license information, license plate information, and vehicle identification numbers. Thus, these types of information are not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office need not release any such information. Therefore, we will not address your assertion of section 552.130 for driver's license information or section 552.147 for social security numbers.

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 the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Texas 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. 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. In addition, 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). Upon review, we find the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.122 of the Government Code excepts from public disclosure “[a] test item developed by a . . . governmental body[.]” Gov’t Code § 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 office'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's office. 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's office 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 552.1175 of the Government Code 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.¹ *See id.* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1). We have marked information of a peace officer not held in an employment capacity that is subject to section 552.1175. If the peace officer elects to restrict access to the information pertaining to him in accordance with section 552.1175(b), the sheriff’s office must withhold the marked information under section 552.1175 of the Government Code.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). *Id.* § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The sheriff’s office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure. However, none of the remaining information is subject to section 552.137 and none of it may be withheld on that basis.

In summary, the sheriff’s office (1) must withhold the information it has marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) may withhold the exam information we have marked under section 552.122 of the Government Code; (3) must withhold the information we have marked under section 552.1175 of the Government Code if the peace officer elects to restrict access to his information in accordance with section 552.1175(b); (4) must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure; and (5) must release the remaining responsive information.²

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470.

²We note the requestor has a special right of access under section 552.023 of the Government Code to some of the information being released in this instance. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the sheriff’s office receives another request for this information from a different requestor, the sheriff’s office must again seek a ruling from this office.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/dls

Ref: ID# 488615

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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