



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2014

Mr. Robert J. Davis
For Collin County Sheriff's Office
Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis, L.L.P.
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2014-17586

Dear Mr. Davis:

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# 538288 (Collin County File No. 1600-66016).

The Collin County Sheriff's Office (the "sheriff's office"), which you represent, received a request for all documents pertaining to the requestor, a sheriff's office employee, from November 1, 1995 to the date of the request. You state you have released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2003-8598 (2003). In that ruling, we determined the sheriff's office must release the summary and statement we marked in accordance with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.-El Paso 1992, writ denied); however, in releasing such information, the sheriff's office must withhold the information we marked under sections 552.101 and 552.117 of the Government Code. We further determined the remaining submitted information must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and *Ellen*. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the sheriff's office must continue to rely on Open Records Letter No. 2003-8598 as a previous determination, and withhold or release the requested information that is identical to the information that was at issue in Open Records Letter

¹Although you also raise section 552.119 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the requested information. See Gov't Code §§ 552.301, .302.

No. 2003-8598 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will consider your arguments against disclosure.

Next, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it was created after the sheriff's office received 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 is not required to release this information in response to this request.

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

You cite to *Ellen* in support of the sheriff's office's argument under common-law privacy for the submitted information. In *Ellen*, the court addressed the applicability of common-law privacy to information relating to an investigation of alleged sexual harassment in an employment context. In this instance, the information at issue does not consist of a sexual harassment investigation in the employment context of the sheriff's office. Thus, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy and *Ellen*. Furthermore, we find none of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Thus, no portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See* Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a

duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You state the requestor submitted a complaint to the Professional Standards Section alleging “Prohibited Employment Policies/Practices” and “Equal Employment Opportunity Commission Violations,” including gender discrimination and retaliation. You also state the requestor allegedly violated an administrative warning. However, you do not inform us, nor does the submitted information reflect, that the alleged violations carry any civil or criminal penalties. See ORD 279 at 2. Thus, we find you have failed to demonstrate how any portion of the submitted information consists of the identifying information of an individual who made a report of a violation of a statute or ordinance to the sheriff’s office for purposes of the informer’s privilege. Accordingly, the sheriff’s office may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of the common-law informer’s privilege.

We note some portions of the submitted information are subject to section 552.102 of the Government Code.² 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 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). Therefore, the sheriff’s office must withhold the dates of birth 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 address, home telephone number, 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 sections 552.024 and 552.1175 of the Government Code. See Gov’t Code § 552.117(a)(2). We note section 552.117 protects personal privacy. Therefore, the requestor has a right of access to her own personal information and her husband’s personal information under section 552.023 of the Government Code, and such information may not be withheld from her under section 552.117. See *id.* § 552.023(a) (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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). However, the sheriff’s office must withhold the information we have marked pertaining to other employees under section 552.117 of the Government Code.

²The 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 (1987).

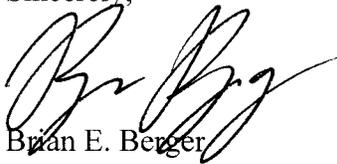
Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Upon review, we find section 552.1175 is not applicable to any of the submitted information. Therefore, the sheriff's office may not withhold any of the submitted information on that ground.

In summary, to the extent the requested information is identical to the information that was at issue in Open Records Letter No. 2003-8598, the sheriff's office must withhold or release it in accordance with that ruling. In addition, the sheriff's office must withhold the dates of birth we have marked under section 552.102(a) of the Government Code, and the information we have marked under section 552.117 of the Government Code. The remaining submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 538288

Enc. Submitted documents

c: Requestor
(w/o enclosures)