



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 8, 2014

Ms. Caitlin Culpepper
Records Supervisor
Taylor County Sheriff's Office
450 Pecan Street
Abilene, Texas 79602-1692

OR2014-22136

Dear Ms. Culpepper:

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# 547595.

The Taylor County Sheriff's Office (the "sheriff's office") received a request for records related to a named former sheriff's deputy. You claim the submitted information is excepted from disclosure under sections 552.108, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(2) of the Government Code protects "an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments

¹Although you have marked information under section 552.024 of the Government Code, we note this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). The information at issue was generated as part of internal administrative investigations conducted by the sheriff's office. You do not indicate the internal investigations resulted in a criminal investigation or prosecution that concluded in a final result other than a conviction or deferred adjudication. We therefore conclude you have failed to demonstrate the applicability of subsection 552.108(b)(2) and the sheriff's office may not withhold the information you have marked under section 552.108(b)(2).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. This section 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. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, this office has concluded some kinds of personal financial information not relating to the financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600, 523 (1989). This office has also determined a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (stating net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to the public). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545. Further, this office has noted the public has a legitimate interest in

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information relating to those who are involved in law enforcement. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of law enforcement employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Upon review, we find the information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.³

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 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 information we have indicated under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts 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 elects confidentiality under sections 552.024 and 552.1175 of the Government Code.⁴ Gov't Code § 552.117(a)(2). In this instance, it is unclear whether the individuals at issue are currently licensed peace officers as defined by article 2.12. Thus, if the individuals at issue are currently licensed peace officers as defined by article 2.12, then the sheriff's office must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code. If, however, the individuals at issue are not currently licensed peace officers, then the information at issue may not be withheld under section 552.117(a)(2). However, we find none of the remaining information is confidential under section 552.117(a)(2), and the sheriff's office may not withhold any of it on that basis.

If the individuals whose information is at issue are not currently licensed peace officers, but are current or former employees of the sheriff's office, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts the same information for a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.*

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

§ 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. You have submitted documentation demonstrating one of the individuals whose information is at issue has elected confidentiality for his information. Thus, to the extent this individual is not a currently licensed peace officer, the information pertaining to this individual, which we have marked and indicated, must be withheld under section 552.117(a)(1). However, we are unable to determine whether the remaining individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. Therefore, to the extent the remaining individuals whose information is at issue are not currently licensed peace officers, but are current or former employees of the sheriff's office who timely requested confidentiality under section 552.024, the sheriff's office must withhold the information we have marked and indicated relating to those individuals under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue are not currently licensed peace officers and did not timely request confidentiality under section 552.024, or are not current or former employees of the sheriff's office, the sheriff's office may not withhold the marked and indicated information pertaining to those individuals under section 552.117(a)(1). Furthermore, we find none of the remaining information is confidential under section 552.117(a)(1), and the sheriff's office may not withhold any of it 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, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find none of the remaining information consists of motor vehicle record information subject to section 552.130. Accordingly, none of the remaining information may be withheld under section 552.130 of the Government Code.

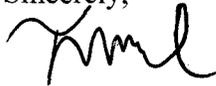
In summary, the sheriff's office must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have indicated under section 552.102(a) of the Government Code. If the individuals at issue are currently licensed peace officers as defined by article 2.12, then the sheriff's office must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code. To the extent the individual who timely elected confidentiality is not a currently licensed peace officer, the sheriff's office must withhold the information pertaining to this individual, which we have marked and indicated, under section 552.117(a)(1). To the extent the remaining individuals whose information is at issue are not currently licensed peace officers, but are current or former employees of the sheriff's office who timely requested confidentiality under section 552.024, the sheriff's office must withhold the information we

have marked and indicated relating to those individuals under section 552.117(a)(1) of the Government Code. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining information.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 547595

Enc. Submitted documents

c: Requestor
(w/o enclosures)