



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 20, 2016

Ms. Erin D. Thorn  
Assistant District Attorney  
Hidalgo County District Attorney's Office  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2016-21249

Dear Ms. Thorn:

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# 627358 (County File No. 2016-0088-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for a named former officer's personnel file. You state the sheriff's office will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the you have redacted portions of the submitted information. We understand you have redacted the named former officer's social security number under section

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the sheriff's office holds in an employment capacity. *See* Gov't Code §§ 552.117, .1175.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001).<sup>3</sup> However, we note you have also redacted other portions of the submitted information. A governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001) (previous determinations). You do not assert, nor does our review of the records indicate, the sheriff's office has been authorized to withhold the remaining redacted information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); ORD 673. Therefore, 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. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the sheriff's office should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 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." *Id.* § 552.101. This exception encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the W-4 forms you submitted as Exhibit E constitute tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.<sup>4</sup>

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<sup>3</sup>Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses section 412.0128 of the Labor Code, which provides that “[i]nformation in or derived from a workers’ compensation claim file regarding an employee . . . is confidential . . . and may not be disclosed by [the State Office of Risk Management (“SORM”)] except as provided by . . . this subchapter, or other law.” Labor Code § 412.0128. We note the language of section 412.0128 is substantially identical to section 402.083 of the Labor Code, which provides that “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”)] except as provided by this subtitle or other law.” *Id.* § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the division. *See* ORD 533 at 3-6; *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, for purposes of section 402.083(a), information that was not obtained from the division may not be withheld on that basis. Based on this analysis, we find information in the possession of the sheriff’s office that was not obtained from SORM may not be withheld on the basis of section 412.0128. Further, this office has interpreted section 402.083 to protect only that “information in or derived from a claim file that explicitly or implicitly discloses the identity of employees who file workers’ compensation claims.” Open Records Decision No. 619 at 10 (1993). Prior decisions of this office have found that information revealing the date of injury, as well as an injured employee’s name, beneficiary name, claim number, social security number, home telephone number, home address, and date of birth implicitly or explicitly identifies a workers’ compensation claimant and is therefore confidential under section 402.083. Only in those cases where release of the employer’s identity would reveal the claimant’s identity may the identity of an employer be withheld. We will apply the same analysis in applying section 412.0128 to the information at issue.

We understand SORM administers the workers’ compensation insurance program for state employees. *See* Labor Code § 412.011(a), (b)(7). You state the information marked Exhibit D pertains to a worker’s compensation claim of a state employee. *See id.* § 501.001(5)(C)(i) (peace officers employed by a political subdivision and exercising authority granted under article 2.12 of the Code of Criminal Procedure are state employees for purposes of workers’ compensation insurance coverage). However, you do not state whether the information at issue was obtained by the sheriff’s office from SORM. Because we are unable to determine whether the information at issue was obtained from SORM, we must rule conditionally. To the extent the information at issue was obtained by the sheriff’s office from SORM, the sheriff’s office must withhold any information that explicitly or implicitly identifies a workers’ compensation claimant, including the claimant’s date of injury, name, beneficiary name, claim number, social security number, home telephone number, home address, and date of birth, under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code. *Cf. Id.* § 402.083; ORD 619 at 10. However, if this information was not obtained by the sheriff’s office from SORM, then the sheriff’s office may not withhold this information under section 552.101 in conjunction with section 412.0128 of the Labor Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. We note Exhibit C consists of F-5 forms, one of which was created prior to the effective date of the amendment of section 1701.454 by the Seventy-ninth Legislature. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4094, 4096. The documents created prior to 2005 are governed by the previous version of section 1701.454. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.<sup>5</sup> Section 1701.454 previously provided as follows:

(a) A report or statement submitted to the commission 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 subsection, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the commission employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096. As amended by the 79th Legislature, section 1701.454 now provides:

(a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government

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<sup>5</sup>Section 6 of the amending legislation states “[t]he changes in law made by this Act in relation to employment termination reports apply only to an employment termination report under Subchapter J, Chapter 1701, Occupations Code, regarding a resignation or termination that occurs on or after the effective date of this Act. An employment termination report regarding a resignation or termination that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date and that law is continued in effect for that purpose.” Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.

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 commission member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. The submitted F-5 forms do not appear to be subject to release under either version of the statute. Accordingly, the sheriff's office must withhold the submitted F-5 form that was created prior to the effective date of the amendment of section 1701.454 of the Occupations Code by the Seventy-ninth Legislature under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code.<sup>6</sup> The sheriff's office must withhold the remaining F-5 forms in Exhibit C under section 552.101 of the Government Code in conjunction with current section 1701.454 of the Occupations Code.<sup>7</sup>

Section 552.101 of the Government Code also 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note the information in Exhibit D pertains to a worker's compensation claim and, thus, there is a legitimate public interest in this information. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find none of the information in Exhibit D is highly intimate or embarrassing and of no legitimate public interest. Therefore, the sheriff's office may not withhold any of the information in Exhibit D under section 552.101 of the Government Code on this basis.

To the extent the information in Exhibit D is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code, we note portions of this information are subject to section 552.117 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

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>7</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, you have failed to demonstrate section 552.117 is applicable to any of the remaining information. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.117 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 personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a). The sheriff's office must withhold the motor vehicle record information we have marked in Exhibit B under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. To the extent the information in Exhibit D was obtained by the sheriff's office from SORM, the sheriff's office must withhold any information that explicitly or implicitly identifies a workers' compensation claimant, including the claimant's date of injury, name, beneficiary name, claim number, social security number, home telephone number, home address, and date of birth, under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code. The sheriff's office must withhold the submitted F-5 form that was created prior to the effective date of the amendment of section 1701.454 of the Occupations Code by the Seventy-ninth Legislature under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code. The sheriff's office must withhold the remaining F-5 forms in Exhibit C under section 552.101 of the Government Code in conjunction with current section 1701.454 of the Occupations Code. To the extent the information in Exhibit D was not obtained by the sheriff's office from SORM, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The sheriff's office must withhold the motor vehicle record information we have marked in Exhibit B 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](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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is fluid and cursive, with the first name "Tim" being more prominent than the last name "Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 627358

Enc. Submitted documents

c: Requestor  
(w/o enclosures)