



# Privacy and Personnel Records

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# Section 552.117 v. 552.1175

Must tell us...	552.117(a)(1)	552.117(a)(2) & (a)(16)	552.1175
To whom does the information belong and how is it held?	Current & former employees of your governmental body held by you in an employment capacity	Current peace officers or fire fighters employed by your governmental body held by you in an employment capacity	Peace officers, fire fighters & other enumerated individuals either (1) employed by you, but the information is held in a non-employment capacity, or (2) employed by another governmental body
What information is protected?	Home Address Home Telephone Number Social Security Number Emergency Contact Information Family Member Information	Home Address Home Telephone Number Social Security Number Emergency Contact Information Family Member Information	Home Address Home Telephone Number Social Security Number Emergency Contact Information Family Member Information Date of Birth
Has the individual elected confidentiality?	Employee elected confidentiality before you received the request	Protection is automatic regardless of election	Individual makes an election with your governmental body (can be after you received the request)



# Personnel Information Sheet

Payroll ID: 548641      Date of Employment: May 15, 2018

Rank: Corporal

Employee Name: Thomas Jones

SSN: 123-45-6789      DL # TX 56421789

Date of Birth: January 11, 1970

Home Number: 512-746-969

E-mail Address: tjones70@gmail.com

Address:            13455 Ave C

Manhattan, Texas 17178

Marital Status:  Single  Married  Separated  Divorced

Name of Spouse: Maria Jones

Emergency Contact:

Name: Jeff Miller

Phone number: (512) 555-0100

Relationship: Friend



## Section 552.117(a)(2)

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## Section 552.102(a) (Slide 1 of 2)

- ▶ Protects the date of birth of an employee of a governmental body in a record maintained by his or her employer in an employment context



## Section 552.102(a) (Slide 2 of 2)

Payroll ID: 548641      Date of Employment: May 15, 2018

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                         Manhattan, Texas 17178

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Emergency Contact:

Name: Jeff Miller                      Phone number: (512) 555-0100

Relationship: Friend



## Section 552.130 (Slide 1 of 2)

- ▶ (a) Information is excepted from disclosure if the information relates to:
  - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
  - (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
  - (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.



## Section 552.130 (Slide 2 of 2)

Payroll ID: 548641      Date of Employment: May 15, 2018

Rank: Corporal

Employee Name: Thomas Jones

SSN: 123-45-6789      DL # TX 56421789

Date of Birth: January 11, 1970

Home Number: 512-746-969

E-mail Address: tjones70@gmail.com

Address:            13455 Ave C

Manhattan, Texas 17178

Marital Status:  Single  Married  Separated  Divorced

Name of Spouse: Maria Jones

Emergency Contact:

Name: Jeff Miller

Phone number: (512) 555-0100

Relationship: Friend





## Section 552.137 (Slide 1 of 2)

- ▶ (a) Except as otherwise provided by this section, 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.



## Section 552.137 (Slide 2 of 2)

Payroll ID: 548641      Date of Employment: May 15, 2018

Rank: Corporal

Employee Name: Thomas Jones

SSN: 123-45-6789      DL # TX 56421789

Date of Birth: January 11, 1970

Home Number: 512-746-969

E-mail Address: tjones70@gmail.com

Address: 13455 Ave C

Manhattan, Texas 17178

Marital Status:  Single  Married  Separated  Divorced

Name of Spouse: Maria Jones

Emergency Contact:

Name: Jeff Miller

Phone number: (512) 555-0100

Relationship: Friend



# Tips for Section 552.102(a)

- ▶ Right of access under section 552.023
- ▶ Does not apply to deceased individuals
- ▶ Only applies when held in an employment context



# Tips for Section 552.130

- ▶ Right of access under section 552.023
- ▶ Does not apply to deceased individuals
- ▶ May redact without requesting a ruling under section 552.130(c)



# Tips for Section 552.137

- ▶ Right of access under section 552.137(b)
- ▶ Does not apply to deceased individuals
- ▶ May redact under Open Records Decision No. 684 (2009) without requesting a ruling
- ▶ Does not apply to private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business
- ▶ Does not apply to certain e-mail addresses enumerated in section 552.137(c)



# Section 560.003 of the Government Code

- ▶ A biometric identifier in the possession of a governmental body is exempt from disclosure under the Act



# Biometric Identifier

- ▶ Fingerprints
- ▶ Iris Scan
- ▶ Voiceprint
- ▶ Record of Hand or Face Geometry



# Tips When Raising Section 560.003 of the Government Code

- ▶ Right of access to your own biometric identifier
- ▶ Does not apply to deceased individuals
- ▶ May redact without requesting a ruling under Open Records Decision No. 684 (2009)





# Section 1324a of title 8 of the United States Code

- ▶ (5) Limitation on use of attestation form
  - A form designated or established by the United States Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of Title 18.



# When Does Section 1324a of title 8 of the United States Code Apply

- ▶ Employment Eligibility Verification “Form I-9”
- ▶ Appended ID forms
  - Attached driver’s license or Social Security card



# Section 6103(a) of title 26 of the United States Code

- ▶ Protects return information
- ▶ Return information is defined 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[.]”



# When Does Section 6103(a) of title 26 of the United States Code Apply

- ▶ W-2
- ▶ W-4
- ▶ Does not apply to W-9



## Section 552.140

- ▶ (a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.



# Section 552.101 of the Government Code

- ▶ Incorporates law outside of the Public Information Act (the “Act”)
  - Constitutional
  - Statutory
  - Case law
  
- ▶ Must be raised in conjunction with a law outside the Act, including common-law privacy



# Section 143.089(a) of the Local Government Code

- ▶ (a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:
  - (1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;
  - (2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and
  - (3) the periodic evaluation of the fire fighter or police officer by a supervisor.



# Section 143.089(g) of the Local Government Code

- ▶ (g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.





# Who Does Section 143.089 of the Local Government Code Apply to?

- ▶ The following types of municipalities that elect to become civil service cities:
  - Police Officers
  - Fire Fighters
  - Certain Emergency Medical Services Personnel



# Section 143.089 of the Local Government Code

- ▶ Allows for two different personnel files
  - Civil service file maintained pursuant to section 143.089(a) by the Civil Service Commission
  - Internal file maintain pursuant to section 143.089(g) by the police, fire, or EMS



# What goes in each file?

## ▶ Civil Service File (a)

- Commendations or honors
- All information relating to misconduct that resulted in disciplinary action
- Periodic evaluations

## ▶ Internal File (g)

- Investigation documents of misconduct that did not result in disciplinary action
- Other documents not specifically required to be in civil service file



# Section 143.089(a) of the Local Government Code

- ▶ Requires the civil service commission to maintain a civil service file, which must contain certain types of information
- ▶ Not confidential
- ▶ A governmental body may raise other exceptions to disclosure
- ▶ Right of access for individual whose file is at issue



# Section 143.089(g) of the Local Government Code

- ▶ Allows for the maintenance of an internal file by a police department, fire department, or EMS provider
- ▶ Confidential
- ▶ A governmental body must refer the requestor to the civil service commission.
- ▶ No right of access to the individual whose file is at issue



# Section 143.089(g) of the Local Government Code

- ▶ A governmental body may not *engraft* the confidentiality of section 143.089(g) to information maintained separate from the internal file when such information is specifically requested
- ▶ A governmental body may, however, withhold separately maintained information that is specifically requested pursuant to other exceptions to disclosure



# Hypothetical (Slide 1 of 4)

- ▶ Officer's file contains commendations, a written reprimand, training information, and evaluations. Which of these documents must be contained in each file?
  - Commendation
  - Written Reprimand
  - Training Information
  - Evaluations



# Hypothetical (Slide 2 of 4)

▶ Officer's file contains commendations, a written reprimand, training information, and evaluations. Which of these documents must be contained in each file?

- Commendation → (a) file
- Written Reprimand → (g) file
- Training Information → Either
- Evaluations → (a) file





## Hypothetical (Slide 3 of 4)

- ▶ The Manhattan Police Department received a request for all information pertaining to a complaint that Officer was unprofessional during a recent arrest. The department has a police report and an internal investigation, which resulted in a written reprimand. Can the department withhold all the responsive information under section 143.089(g)?
  - Yes
  - No



# Hypothetical (Slide 4 of 4)

- ▶ The Manhattan Police Department received a request for all information pertaining to a complaint that Officer was unprofessional during a recent arrest. The department has a police report and an internal investigation, which resulted in a written reprimand. Can the department withhold all the responsive information under section 143.089(g)?
  - Yes
  - No



# Tips When Raising Section 143.089 of the Local Government Code

- ▶ Has your city elected to become a civil service city?
- ▶ Who received the request?
- ▶ What information is requested?
- ▶ Is the information at issue maintained within the civil service (a) file or the internal (g) file?
- ▶ If the information relates to misconduct by an officer, fire fighter, or emergency medical services personnel, has the investigation resulted in disciplinary action?



# Common-Law Privacy

- ▶ Information that contains highly intimate or embarrassing facts, which if publicized would be highly objectionable to a reasonable person and
- ▶ Is not of legitimate concern to the public



# Types of Common-Law Privacy

- ▶ Personal financial information
- ▶ Medical information
- ▶ Information relating to a sexual harassment investigation



# Tips When Raising Common-Law Privacy

- ▶ Right of access under section 552.023
- ▶ Does not apply to deceased individuals
- ▶ Not applicable to court-filed documents subject to section 552.022(a)(17)



# Personal Financial Information

- ▶ Information not relating to a financial transaction between an individual and a governmental body
- ▶ Legitimate public interest in the details of a financial transaction with a governmental body



# Types of Personal Financial Information

- ▶ Assets or debts
- ▶ Optional insurance elections
- ▶ Direct deposit authorization
- ▶ Lien information
- ▶ Designation of beneficiaries of retirement benefits
- ▶ Choice of financial institution
- ▶ Net pay





# Personal Financial Information

- ▶ Common financial information not protected:
  - Mandatory deductions
  - Government funded group insurance fund
  - Gross pay



# Hypothetical (Slide 1 of 2)

- ▶ Officer's personnel file contains his insurance enrollment forms. Which of the following is true?
  - A. Department can withhold the entirety of the insurance enrollment form containing optional and mandatory deductions under common-law privacy
  - B. Department should inform the OAG what options are optional and employee paid and what options are mandatory or employer paid, in whole or in part
  - C. Beneficiary designations are private under common-law privacy



# Hypothetical (Slide 2 of 2)

- ▶ Officer's personnel file contains his insurance enrollment forms. Which of the following is true?
  - A. Department can withhold the entirety of the insurance enrollment form containing optional and mandatory deductions under common-law privacy
  - B. Department should inform the OAG what options are optional and employee paid and what options are mandatory or employer paid, in whole or in part
  - C. Beneficiary designations are private under common-law privacy



# Statement of Earning

## Manhattan Police Department

Name: Officer Jones

Number of Exemptions: 3

<b>EARNINGS</b>	<b>CURRENT</b>	<b>YR-TO-DT</b>	<b>DEDUCT</b>	<b>CURRENT</b>	<b>YR-TO-DT</b>
Salary Gross	4492.24	39430.16	Fed W/H Tax	469.47	4023.31
Retirement	311.88	2737.92	Medicare Tax	278.52	571.74
401K Amt	42.08	369.40	Disability Long	26.90	242.10
Fed W/H Gross	4138.28	36322.84	ERS Retirement	311.88	2737.92
			401K	42.08	369.40
Total Gross	4492.24	39430.16	Total	1128.85	7944.47
Total Deducts	1128.85	7944.47	Deductions		
Total Net Pay	3363.39	26907.12			3363.39

**Disbursement:**



# Common-law Privacy

## Manhattan Police Department

Name: Officer Jones

Number of Exemptions: 3

EARNINGS	CURRENT	YR-TO-DT	DEDUCT	CURRENT	YR-TO-DT
Salary Gross	4492.24	39430.16	Fed W/H Tax	469.47	4023.31
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401K Amt	42.08	369.40	Disability Long	26.90	242.10
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			401K	42.08	369.40
Total Gross	4492.24	39430.16	Total Deductions	1128.85	7944.47
Total Deducts	1128.85	7944.47			
Total Net Pay	3363.39	26907.12			3363.39

Disbursement:



# Hypothetical (Slide 1 of 2)

- ▶ A police officer's personnel file includes the following documents: credit report, lender's request for verification of employment form, and direct deposit enrollment form. Which of these documents would you withhold in their entirety based on section 552.101 in conjunction with common-law privacy?
  - A. Credit Report
  - B. Request for Verification of Employment
  - C. Direct Deposit Enrollment Form
  - D. All of the above



## Hypothetical (Slide 2 of 2)

- ▶ A police officer's personnel file includes the following documents: credit report, lender's request for verification of employment form, and direct deposit enrollment form. Which of these documents would you withhold in their entirety based on section 552.101 in conjunction with common-law privacy?
  - A. Credit Report
  - B. Request for Verification of Employment
  - C. Direct Deposit Enrollment Form
  - D. All of the above



# Medical Information

- ▶ specific illnesses or disabilities





# Types of Medical Information

- ▶ Operations
- ▶ Physical handicaps
- ▶ Psychiatric treatment of mental illnesses
- ▶ Specific prescription medications
- ▶ Pregnancy
- ▶ Blood type



## Hypothetical (Slide 1 of 2)

- ▶ The city secretary requests leave stating, “I have an ear infection and am on medication. I will be out today.” What portion of the city secretary’s statement can be withheld from Citizen as medical information under common-law privacy?
  - A. All
  - B. None
  - C. “ear infection”
  - D. “ear infection” and “medication”



## Hypothetical (Slide 2 of 2)

- ▶ The city secretary requests leave stating, “I have an ear infection and am on medication. I will be out today.” What portion of the city secretary’s statement can be withheld from Citizen as medical information under common-law privacy?
  - A. All
  - B. None
  - C. “ear infection”
  - D. “ear infection” and “medication”



# Sexual Harassment Investigation

- ▶ Protected information is handled two different ways depending on whether or not there is an adequate summary of the investigation.
- ▶ Must be in employment context



# Adequate Summary

- ▶ Withhold all investigation information except the statement of the accused and the adequate summary and
- ▶ The identities of the victims and witnesses of sexual harassment within the adequate summary and statement of the accused



# No Adequate Summary

- ▶ Withhold the identities of the victims and witnesses of sexual harassment throughout investigation



# Tips When Raising Sexual Harassment Under Common-Law Privacy

- ▶ An adequate summary includes the allegations as well as the results of the investigation
- ▶ In either case, the identity of the person accused of sexual harassment and his/her statement is not protected
- ▶ Only applies to sexual harassment in the employment context
  - This analysis does not apply to a police report



# Hypothetical (Slide 1 of 6)

- ▶ Co-worker accuses Officer of sexually harassing her. The department conducts a sexual harassment investigation and creates an adequate summary. What information can be withheld from Citizen upon request?
  - A. Victim's identifying information
  - B. Witness's identifying information
  - C. All documents except the adequate summary
  - D. All of the above





## Hypothetical (Slide 2 of 6)

- ▶ Co-worker accuses Officer of sexually harassing her. The department conducts a sexual harassment investigation and creates an adequate summary. What information can be withheld from Citizen upon request?
  - A. Victim's identifying information
  - B. Witness's identifying information
  - C. All documents except the adequate summary
  - D. All of the above



# Hypothetical (Slide 3 of 6)

- ▶ If the department does not create an adequate summary as part of its sexual harassment investigation, what information can the department withhold from Citizen?
  - A. Victim's identifying information
  - B. Witness's identifying information
  - C. All documents
  - D. All of the above



# Hypothetical (Slide 4 of 6)

- ▶ If the department does not create an adequate summary as part of its sexual harassment investigation, what information can the department withhold from Citizen?
  - A. Victim's identifying information
  - B. Witness's identifying information
  - C. All documents
  - D. All of the above



# Hypothetical (Slide 5 of 6)

- ▶ Victim requests a copy of the sexual harassment investigation. The investigation does not contain an adequate summary. What information can be withheld from Victim?
  - A. Victim's identifying information
  - B. Witness's identifying information
  - C. All documents
  - D. All of the above



# Hypothetical (Slide 6 of 6)

- ▶ Victim requests a copy of the sexual harassment investigation. The investigation does not contain an adequate summary. What information can be withheld from Victim?
  - A. Victim's identifying information
  - B. Witness's identifying information
  - C. All documents
  - D. All of the above



# Questions?

## **OAG's Open Government Hotline**

(877) OPEN-TEX

(512) 478-6736

## **OAG Website**

[www.texasattorneygeneral.gov/open/index.shtml](http://www.texasattorneygeneral.gov/open/index.shtml)