



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 9, 1996

The Honorable Leslie Poynter Dixon  
Criminal District Attorney  
Van Zandt County  
202 N. Capitol  
Canton, Texas 75103

OR96-1102

Dear Ms. Dixon:

You seek reconsideration of Open Records Letter No. 96-0517 (1996), in which this office determined that the Texas Open Records Act, Government Code chapter 552, required the Van Zandt county sheriff (the "sheriff") to make certain information available to the requestor and withhold certain information if the former employee made an election to keep it confidential. We have assigned your request for reconsideration ID# 40266.

The sheriff received a request for two categories of documents relating to the employment of Bobby Don Cummings by the sheriff's office. You sought to withhold the requested information under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We concluded in Open Records Letter No. 96-0517 (1996) that, as the sheriff had not submitted copies of the requested information to this office for review, the sheriff had not met his obligation under chapter 552 of the Government Code. We concluded that, if the former employee had elected to keep his home address and home telephone number confidential prior to the sheriff's receipt of the request for information, the sheriff must withhold that information. However, we also concluded that birthdates, marital status, drivers license numbers, and social security numbers were not protected by privacy. Therefore, we determined that the sheriff must release all of the requested information with the possible exception of the employee's home address and home telephone number.

We have examined your request for reconsideration. You have provided us with a copy of the letter and documents you state you originally sent to us in response to our request for additional information. Therefore, as it appears that the sheriff did submit the

requested information, we will now address your claimed exceptions to the extent they were not addressed in Open Records Letter No. 96-0517 (1996).

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. Therefore, we will first address whether section 552.101 applies to the requested information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses both common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law 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.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and 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. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects

of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the documents submitted for our consideration and have marked the information that must be withheld under constitutional or common-law privacy.

Section 552.101 also encompasses information protected by other statutes. This office has concluded that information collected under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the “ADA”), from an applicant or employee concerning that individual’s medical condition and medical history is confidential under section 552.101 of the Government Code, in conjunction with provisions of the ADA. Open Records Decision No. 641 (1996). This type of information must be collected and maintained separate from other information and may be released only as provided by the ADA. We enclose a copy of Open Records Decision No. 641 (1996) for your information. If any of the information on the enclosed applications was collected under the ADA, the sheriff must withhold it pursuant to the reasoning in Open Records Decision No. 641 (1996).

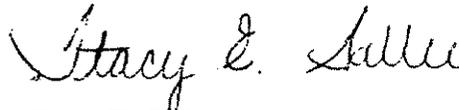
You also contend that section 552.108 of the Government Code excepts the submitted information from required public disclosure. Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n 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.” Gov’t Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. J. 781, 1996 WL 325601 (June 14, 1996). However, we believe that the records submitted to this office for review are not “internal record[s] or notation[s] of a law enforcement agency that [are] maintained for internal use in matters relating to law enforcement or prosecution.” Instead, these documents concern routine administrative matters. Therefore, the sheriff may not withhold the submitted documents under section 552.108 of the Government Code.

We note that section 552.117 was amended in the last legislative session to include social security numbers and information regarding whether the employee has family members. However, this amendment did not affect requests for information made prior to September 1, 1995. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 26, 1995 Tex.

Sess. Law Serv. 5127, 5130. As the subject request was received prior to that date, this amendment does not make confidential information regarding whether this former employee has family members or his social security number. Moreover, we do not find that this information is excepted from disclosure by privacy. Therefore, as we stated in Open Records Letter No. 96-0517 (1996), only if the former employee elected to keep his home address and home telephone number confidential must the sheriff withhold that information. As you have not offered any information indicating that federal law makes this social security number confidential, we conclude that the sheriff may not withhold it under section 552.101.<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref: ID# 40266

Enclosures: Marked documents  
Open Records Decision No. 641 (1996)

cc: Mr. J. Tom Graham  
Publisher  
The Mineola Monitor  
P.O. Box 210  
Mineola, Texas 75773  
(w/o marked documents; w/Open Records Decision No. 641 (1996))

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<sup>1</sup>We note that one of the documents submitted to this office for review has other employees' social security numbers on it. If federal law requires that these numbers be kept confidential, the sheriff must withhold these social security numbers. Otherwise, this information must be released.