



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2005

Ms. Theresa Lock
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2005-02983

Dear Ms. Lock:

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# 221598.

The Williamson County Sheriff's Office (the "sheriff") received a request for the personnel files of two named deputies with the sheriff's office. You claim that portions of the submitted information are excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the personnel file related to one of the named deputies was the subject of a previous ruling issued by this office, specifically Open Records Letter No. 2005-02764 (2005). Since the relevant facts and circumstances have not changed since the issuance of Open Records Letter No. 2005-02764, we determine that the sheriff must continue to withhold the information addressed in Open Records Letter No. 2005-02764 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and

circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

Section 552.117(a)(2) excepts from disclosure "information that relates to the home address, home telephone number, or social security number" of a peace officer, or that reveals whether the peace officer has family members, regardless of whether the officer complies with section 552.024 or section 552.1175.¹ See Gov't Code § 552.117(a)(2). Accordingly, we conclude that the sheriff must withhold the information that we have marked concerning the peace officer at issue pursuant to section 552.117(a)(2).

Additionally, we note that section 552.1175 may be applicable to a telephone number we have marked in the submitted information. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)-(b). To the extent that the information that we have marked under section 552.1175 is the home telephone number of a peace officer of another governmental entity, the sheriff's office must withhold the information under section 552.1175 if the individual to whom it pertains elects to restrict access to the information in accordance with section 552.1175(b).

Next, we note that a small amount of information, which we have marked, is excepted from disclosure under section 552.101 of the Government Code in conjunction with the doctrine

¹ Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. See Crim. Proc. Code art. 2.12.

of common law privacy.² Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses common-law privacy. Common-law privacy protects information 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types 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. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are protected under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). The sheriff must withhold the information we have marked under section 552.101.

We also note that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. See Gov't Code § 552.130. Accordingly, we conclude that the sheriff must withhold the Texas driver's license information that we have marked pursuant to section 552.130 of the Government Code.

Finally, we note that the submitted information contains an e-mail address. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). Thus, the sheriff must withhold this e-mail address under section 552.137 unless the named deputy has affirmatively consented to its release. See Gov't Code § 552.137(b).

In summary, the sheriff must continue to withhold the information addressed in Open Records Letter No. 2005-02764 in accordance with that ruling. The sheriff must withhold

²The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the information that we have marked concerning the peace officer at issue pursuant to section 552.117(a)(2). To the extent that the telephone number that we have marked under section 552.1175 is the home telephone number of a peace officer of another governmental entity, the sheriff's office must withhold the information under section 552.1175 if the individual to whom it pertains elects to restrict access to the information in accordance with section 552.1175(b). The sheriff must withhold the information we have marked under section 552.101 in conjunction with common law privacy and the driver's license information that we have marked pursuant to section 552.130 of the Government Code. The sheriff must withhold the marked e-mail address under section 552.137 unless the named deputy has affirmatively consented to its release. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

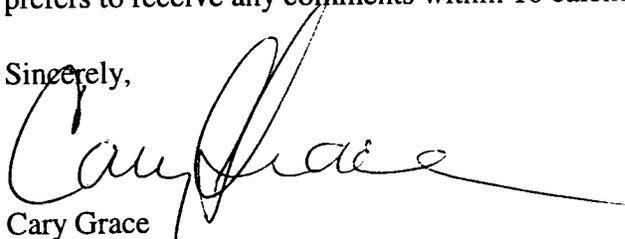
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID#221598

Enc. Submitted documents

c: Mr. Marcial Guajardo
Round Rock Leader
105 South Blair Street
Round Rock, Texas 78664
(w/o enclosures)