



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2006

Mr. James F. Booher  
Assistant Criminal District Attorney  
Hays County  
110 East Martin Luther King  
San Marcos, Texas 78666

OR2006-15062

Dear Mr. Booher:

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# 267599.

The Hays County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a former officer, including an arrest affidavit, photographs, audio and video recordings relating to a specified traffic stop, and employment records. You state that most of the requested information has been released to the requestor with certain information redacted. You state you have redacted the social security numbers from the submitted information pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147 (authorizing a governmental body to redact a living person's social security number from public release without the necessity of requesting decision from this office under the Act). You also state you have redacted the officer's address pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001).<sup>1</sup> You claim that the requested audio and video recordings are excepted from disclosure under

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<sup>1</sup>*See* Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without necessity of requesting attorney general decision under section 552.117(a)(2)); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

section 552.108 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

The Act imposes a duty on a governmental body seeking an open records decision to submit the following information within fifteen business days of receiving the written request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The sheriff's office did not, however, submit the requested audio or video recordings. Thus, the sheriff's office failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that its disclosure affects third party interests. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived by a governmental body's failure to comply with the procedural requirements of the Act. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). By failing to comply with the requirements of section 552.301, the sheriff's office has waived its claim under section 552.108 of the Government Code. We therefore conclude that the sheriff's office must release the requested audio and video recordings to the requestor.

We note that the submitted documents include Reports of Separation of License Holder addressed to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE"). This form, also known as a form "F-5," is subject to section 1701.454 of the Occupations Code. Section 552.101 of the Government Code excepts from disclosure

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<sup>2</sup>Although you also raised section 552.102 of the Government Code, you have not provided any arguments in support of this claim. Thus, we assume that the sheriff's office no longer asserts section 552.102 against disclosure. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

“information deemed confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 1701.452 of the Occupations Code requires a law enforcement agency to submit a report to TCLEOSE regarding an officer licensed under chapter 1701 of the Occupations Code whose appointment with the law enforcement agency is terminated. *See* Occ. Code § 1701.452. Section 1701.454 provides:

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

*Id.* § 1701.454. To the extent the submitted F-5 forms do not meet the criteria for disclosure provided under section 1701.454, we find that the sheriff’s office must withhold the forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have reviewed the submitted documents and marked the information that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that some of the submitted information is subject to section 552.117(a)(2) of the Government Code, which excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.<sup>3</sup> As previously noted, you have redacted personal information of the peace officer pursuant to the previous determination of this office in Open Records Decision No. 670. We have marked additional

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<sup>3</sup>“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

information that must also be withheld under section 552.117(a)(2) of the Government Code. We note that some of the information you have redacted is not subject to section 552.117(a)(2). We have marked this information for release to the requestor.

We note that the submitted information also contains Texas driver's license and motor vehicle information. Section 552.130 of the Government Code 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." Gov't Code § 552.130. The sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

We note that the portions of the submitted information are subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

*Id.* § 552.136. The sheriff's office must withhold the insurance policy number we have marked pursuant to section 552.136 of the Government Code.

In summary, to the extent the submitted F-5 forms do not meet the criteria for disclosure provided under section 1701.454 of the Occupations Code, we find that the sheriff's office must withhold the forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, as well as the information we have marked under sections 552.117, 552.130, and 552.136 of the Government Code. The remaining requested 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); *Texas 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 Office of the Attorney General 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. 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 'JL Flores', with a long horizontal flourish extending to the right.

Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/jww

Ref: ID# 267599

Enc. Submitted documents

c: Ms. Molly Bloom  
Austin American-Statesman  
109 East Hopkins Street  
San Marcos, Texas 78666  
(w/o enclosures)