



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2006

Mr. Paul J. Stewart
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2006-05541

Dear Mr. Stewart:

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# 250165.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for the personnel file of a named deputy sheriff.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. The submitted information includes L-2 Declarations of Medical Condition and L-3 Declarations of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education (the "commission"). These declarations are confidential pursuant to section 1701.306 of the Occupations Code, which provides the following:

¹You inform us that the sheriff sought and obtained clarification of this request for information. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

financial information in the submitted records that must be withheld under section 552.101 in conjunction with common law privacy.

Next, we address your claims under section 552.117. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security 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 section 552.024 or 552.1175.² Section 552.117(a)(2) incorporates the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We have marked information that the sheriff must withhold under section 552.117(a)(2).³

You also claim that some of the remaining information must be withheld under section 552.130 of the Government Code. This section excepts from disclosure a motor vehicle operator's license, driver's license, title, and registration issued by a Texas agency. *Id.* § 552.130(a)(1), (2). We have marked the portions of the submitted information that the sheriff must withhold under section 552.130.

We note that the submitted information contains an insurance policy number. Section 552.136 of the Government Code states that "[n]otwithstanding 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." Gov't Code § 552.136.⁴ The sheriff must, therefore, withhold the marked insurance policy number under section 552.136.

The submitted information also 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). The e-mail address we have marked does not appear to be of a type specifically excluded by section

²We note that section 552.117 is applicable only to a personal pager or cell phone number paid for by the employee or peace officer. *See* Open Records Decision No. 670 at 6(2001) (statutory predecessor to section 552.117(a)(2) encompassed personal cellular phone numbers and personal pager numbers of peace officers who purchased cellular or pager service with their personal funds). A pager or cell phone number provided to an employee or peace officer at public expense may not be withheld under section 552.117. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use).

³ As our ruling on this issue is dispositive, we need not reach your arguments under section 552.147.

⁴The Office of the Attorney General will raise mandatory exceptions like sections 552.136 and 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

552.137(c). You have not informed us that the individual to whom this e-mail address belongs has affirmatively consented to its release. Therefore, the sheriff must withhold the marked e-mail address under section 552.137.

In summary, the submitted L-2 and L-3 forms are confidential under section 1701.306 of the Government Code and must be withheld under section 552.101 of the Government Code. The personal financial information that we have marked must be withheld under section 552.101 in conjunction with common law privacy. The sheriff must also withhold the information we have marked under sections 552.117(a)(2), 552.130, 552.136, and 552.137 of the Government Code. The remaining submitted 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).

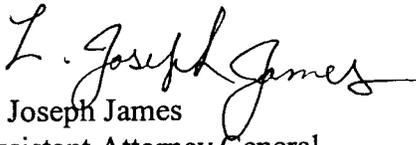
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/sdk

Ref: ID# 250165

Enc. Submitted documents

c: Mr. George Scot Farmer
8123 Summer Wind Court
Sugar Land, Texas 77479
(w/o enclosures)