



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2008

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2008-14552

Dear Ms. Lentz:

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# 325579.

The Williamson County Sheriff's Office (the "sheriff") received a request for the resignation letter of a named individual, any internal affairs reports and/or disciplinary actions and commendations regarding that individual, and the resume on file for that individual. You claim that some of the responsive information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested resume to our office. Therefore, to the extent this information existed when the present request was received, we assume that it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

¹We note that you have marked social security numbers contained in the submitted information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Next, we note that you have submitted information which is not responsive to the present request. This ruling does not address the public availability of information marked as non-responsive and you need not release such information in response to the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Next, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision 673 (2000). As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the sheriff should refrain from redacting any information it submits to this office in seeking an open records ruling.

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. Section 552.101 encompasses information made confidential by statute, such as criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See* Gov't Code § 411.082(2)(B) (term CHRI does not include driving record information). A criminal justice agency may not release CHRI that is subject to chapter 411 except to another criminal justice agency or as otherwise provided by that chapter. Accordingly, the sheriff must withhold the CHRI that it has marked, except where we have marked for release, and the additional CHRI we have marked, under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

Section 552.101 also encompasses section 58.007 of the Family Code, which provides in pertinent part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.002(2). Section 58.007(c) is not applicable to information that relates to a juvenile only as a complainant, victim, witness, or other involved party and does not identify a juvenile as a suspect, offender, or defendant. In this instance, none of the submitted information identifies a juvenile as a suspect, offender, or defendant. Accordingly, no portion of the submitted information may be withheld under section 552.101 in conjunction with section 58.007 of the Family Code.

You seek to withhold an F-5 form. The public availability of an F-5 form (Report of Separation of Licensee) is governed by section 1701.454 of the Occupations Code. Section 552.101 also encompasses section 1701.454 of the Occupations Code which provides in relevant part that "[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." Occ. Code § 1701.454(a). However, the requirement for submitting the form and the information that must be contained within the form are governed by section 1701.452 of the Occupations Code, which states in relevant part:

(a) The head of a law enforcement agency or the head's designee shall submit a report to the commission on a form prescribed by the commission regarding a person licensed under [chapter 1701] who retires or resigns from employment with the law enforcement agency, whose appointment from the law enforcement agency is terminated, or who separates from the law enforcement agency for any other reason[.]

(b) The head of a law enforcement agency or the head's designee shall include in the report required under Subsection (a) a statement on whether the license holder was honorably discharged, generally discharged, or dishonorably discharged and, as required by the commission, an explanation of the circumstances under which the person resigned, retired, or was terminated.

Occ. Code § 1701.452(a)-(b). The F-5 form in the submitted information is blank, and thus, does not meet the requirements set forth in section 1701.452. Therefore, the sheriff may not withhold the F-5 form you have marked under section 1701.454 of the Occupations Code.

Section 552.101 also encompasses the doctrine of 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. This office has concluded personal financial information not relating to the 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) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). A compilation of a individual's criminal history is also highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history).

Upon review, we find that portions of the remaining information are protected under common-law privacy. Therefore, the sheriff must withhold the information you have marked, except where we have marked for release, and the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that none of the remaining submitted information constitutes highly intimate or embarrassing information that is of no legitimate concern to the public and thus may not be withheld under section 552.101 under common-law privacy.

Information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." See Open Records Decision No. 169

(1977). This office considers "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You state that the submitted information, including audio cassette recordings for IA 2005-00025, contains the identifying information of undercover narcotics officers, the release of which would "put their lives at risk." Having considered your argument and the submitted information, we find that you have established that the identifying information of the undercover narcotics officers is confidential under the special circumstances aspect of common-law privacy; therefore, the sheriff must withhold that information, which you have marked, in the submitted documents, as well as in the specified recordings, under section 552.101 of the Government Code. In the event that the sheriff does not have the technological capacity to redact the identifying information from the audio recordings for IA 2005-00025, the sheriff must withhold the audio recordings at issue in their entirety.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, pursuant to section 552.117(a)(1), if the official at issue made a timely election to keep his information confidential, then the sheriff must withhold the official's personal information, which you have marked. If the official at issue did not make a timely election, then the sheriff may not withhold the personal information you have marked under section 552.117(a)(1).

Section 552.117(a)(2) of the Government Code excepts the current and former home address and telephone number, social security number, and the family member information of a peace officer regardless of whether the officer made an election under section 552.024 of the Government Code or complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). This section applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note that section 552.117(a)(2) encompasses peace officer's personal cell telephone and pager numbers if the officer personally pays for the cell or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Thus, if the telephone numbers at issue are the personal cellular phone or pager numbers of police officers, the sheriff must withhold the cellular phone or pager numbers pursuant to section 552.117(a)(2) of the Government Code. However, if the telephone numbers pertain to cellular phone or pager numbers provided to the officers at public expense, the cellular phone or pager numbers are not excepted under section 552.117(a)(2). The sheriff must withhold the information you have marked under section 552.117(a)(2), as well as the additional information we have marked in the submitted documents. Further, the sheriff must withhold the personal information contained in the submitted audio recording for

IA 2008-014 to the extent that the information relates to a currently licensed peace officer and release the remainder of the audio recording. In the event that the sheriff does not have the technological capacity to redact such information from the audio recording for IA 2008-014, we conclude that the sheriff must withhold that audio recording in its entirety.² Although you assert the audio recordings for IA 2008-038 contain information excepted under section 552.117 and 552.1175, we did not discern any personal information on these audio tapes. Therefore, you may not withhold the audio recordings for IA 2008-038 under these exceptions.

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.” *Id.* § 552.130(a)(1), (2). We note that section 552.130 does not apply to out-of-state motor vehicle record information. The sheriff must withhold the information you have marked, except where we have marked for release, and the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides:

(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.

Gov’t Code § 552.136. We note that because check numbers do not constitute access device numbers, section 552.136 is not applicable to this information. The sheriff must withhold the information that you have marked, except where we have marked for release, and the additional information we have marked, under section 552.136 of the Government Code.

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

²As our ruling for this information is dispositive, we need not address your argument under section 552.1175.

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 id.* § 552.137 (a)-(c). Section 552.137(c) excludes the e-mail addresses of a person who has a contractual relationship with a governmental body or its agent. *Id.* § 552.137(c)(1) (section 552.137 does not except e-mail address provided to governmental body by person in contractual relationship with governmental body). We note that a portion of the e-mail addresses you have marked are the addresses of an entity which has a contractual relationship with the sheriff, which are specifically excluded under subsection (c)(1). Therefore, the sheriff must release these addresses, which we have marked. The remaining e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the remaining e-mail addresses. Therefore, with the exception of the e-mail addresses we have marked for release, the sheriff must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, under section 552.101 of the Government Code, the sheriff must withhold (1) the CHRI that it has marked, except where we have marked for release, and the additional CHRI we have marked in conjunction with federal law and chapter 411 of the Government Code; (2) the information you have marked, except where we have marked for release, and the information we have marked in conjunction with common-law privacy; and (3) the identifying information of the undercover narcotics officers under the special circumstances aspect of common-law privacy from the submitted documents and the audio recordings for IA 2005-00025. If the sheriff lacks the technical capacity to redact this information from the audio recordings at issue, the sheriff must withhold these audio recordings in their entirety. The sheriff must withhold the information you have marked under section 552.117(a)(1) if the individual at issue made a timely election to keep his information confidential. The sheriff must withhold the information you have marked under section 552.117(a)(2), as well as the additional information we have marked in the submitted documents. The sheriff must also withhold the personal information contained in the audio recording for IA 2008-014 under section 552.117(a)(2). If the sheriff lacks the technological capacity to redact such information from the audio recording for IA 2008-014, the sheriff must withhold this audio recording in its entirety. The sheriff must withhold the information you have marked, except where we have marked for release, and the additional information we have marked, under section 552.130 of the Government Code. The sheriff must withhold the e-mail addresses you have marked, except where we have marked for release, under section 552.137 of the Government Code. The remaining information must be released, including the information you redacted.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

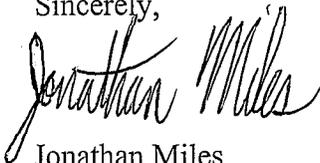
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 325579

Enc. Submitted documents

c: Ms. Patricia Ruland
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(w/o enclosures)