



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2009

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

OR2009-17502

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# 363911.

The Williamson County Sheriff's Office (the "sheriff") received a request for information pertaining to a named officer. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.122, 552.130, 552.137 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. Section 552.101 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. 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. *Id.* at 683. This office has also 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) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990). Upon review, we find the personal financial information you have marked constitutes highly intimate or embarrassing information of no legitimate public interest. Accordingly, the sheriff must withhold this information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code 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 made an election under section 552.024 of the Government Code to keep such information confidential. *Id.* § 552.117(a)(2). We note that some of the information you have marked under section 552.117(a)(2) does not consist of the personal information of an officer. Thus, this information, which we have marked for release, may not be withheld under section 552.117. However, the remaining information you have marked, along with the additional information we have marked, must be withheld under section 552.117(a)(2) of the Government Code.¹

Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], 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.

Id. § 552.1175(b). The submitted information includes the home address and telephone number of peace officers who are not employees of the sheriff. To the extent these individuals are currently licensed peace officers who elect to restrict public access to their personal information, the sheriff must withhold the information you have marked under section 552.1175. To the extent these individuals are not currently licensed peace officers

¹As we are able to make this determination, we need not address your argument under section 552.147 of the Government Code for this information.

or do not elect to restrict public access to their personal information, the sheriff may not withhold information pertaining to those individuals under section 552.1175.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. *Id.* § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee’s overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You state that the information you have marked consists of confidential test items. Upon review of the submitted information, we agree that the information we have marked constitutes test items. Furthermore, we find release of the applicant’s answers to the questions we have marked reveal the questions themselves. Accordingly, we find the sheriff may withhold the information we have marked under section 552.122 of the Government Code. We note that the remaining information you seek to withhold under section 552.122 consists of multiple choice answer sheets that do not reveal any test questions. Therefore, the remaining information you have marked may not be withheld under section 552.122.

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(a). The sheriff must withhold the Texas driver’s license information you have marked under section 552.130 of the Government Code.

Next, section 552.137 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)-(b). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). *See* Gov’t Code § 552.137(c). Therefore, unless the owners of the e-mail addresses at issue consent to their release, the sheriff must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, the sheriff must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the sheriff must withhold the information you have marked, as well as the information we have marked, under section 552.117(a)(2) of the

Government Code. To the extent the officers the sheriff does not employ are currently licensed peace officers who elect to restrict public access to their personal information, the sheriff must withhold the information you have marked under section 552.1175 of the Government Code. The sheriff may withhold the information we have marked under section 552.122 of the Government Code. The sheriff must withhold the information you have marked under section 552.130 of the Government Code. Unless the owners of the e-mail addresses you have marked have consented to their release, the sheriff must withhold the marked e-mail addresses under section 552.137. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 363911

Enc. Submitted documents

c: Requestor
(w/o enclosures)