ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 23, 2010

Ms. Elizabeth Lutton
Legal Advisor
Dallas County Sheriff's Department
133 Riverfront, LB-31
Dallas, Texas 75207-4313

OR2010-05773

Dear Ms. Lutton:

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# 377489.

The Dallas County Sheriff's Department (the "sheriff") received a request for an internal affairs report pertaining to a named individual. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 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 exception encompasses information other statutes make confidential, including section 1703.306(a) of the Occupations Code. Section 1703.306(a) provides "[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]" Occ. Code § 1703.306(a). It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, we conclude the sheriff must withhold the information acquired from a polygraph examination, which we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code. However, you have not

demonstrated the remaining information you have marked was acquired from a polygraph examination; thus, it may not be withheld on the basis of section 1703.306.

Section 552.101 also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprint at issue. Therefore, the sheriff must withhold the fingerprint we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

You claim some of the remaining submitted information is confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy and under section 552.102 of the Government Code. Section 552.101 encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). We will, therefore, consider the applicability of common-law privacy under section 552.101 together with your claim under section 552.102.

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). The types of information considered intimate or 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. However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of public employee's resignation or termination), 423 at 2 (1984) (explaining that because of greater legitimate public interest in disclosure of information regarding public employees, employee privacy under

section 552.102 is confined to information that reveals "intimate details of a highly personal nature"), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under statutory predecessor to section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under common-law right of privacy).

You claim that some of the remaining submitted information is excepted under section 552.101 in conjunction with common-law privacy and the ruling in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). In *Morales*, the court determined that the identities of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and that the public did not have a legitimate interest in such information. *See id.* In this instance, however, the remaining information at issue does not pertain to any claim of sexual harassment. Furthermore, we find that the remaining information is not highly intimate or embarrassing. Thus, none of the remaining submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy or under section 552.102(a) 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 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).[1] *See* Gov't Code § 552.137(a), (b). The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). *See id.* § 552.137(c). Therefore, the sheriff must withhold the marked e-mail address under section 552.137 of the Government Code, unless its owner consents to its release.[2]

In summary, the sheriff must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code and section 560.003 of the Government Code. The sheriff must also withhold the information we have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.

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.

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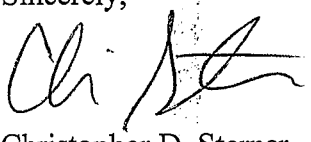
[1]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[2]We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 377489

Enc. Submitted documents

c: Requestor
(w/o enclosures)