



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2010

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

OR2010-09909

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# 385385.

The Dallas County Sheriff's Department (the "sheriff") received a request for internal investigation records concerning a former employee communicating with an inmate. You claim 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. Section 552.101 encompasses information protected by common-law privacy. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." See Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the sheriff's common-law privacy claim under sections 552.101 and 552.102(a) of the Government Code together.

For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See 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. *See id.* at 683. This office has found 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) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Additionally, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). However, this office has found information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and, therefore, is generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). You state the submitted information is about an individual's personal affairs and must be withheld under common-law privacy. We note the submitted information relates to an internal investigation of an employee for fraternization. Upon review, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff must withhold the information we have marked in the submitted documents, as well as the types of information we have noted within the submitted audio recordings, under sections 552.101 and 552.102 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is of legitimate public interest. Thus, no portion of the remaining information may be withheld under section 552.101 or section 552.102 of the Government Code in conjunction with common-law privacy.

We note portions of the remaining information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the personal information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, to the extent the employees at issue timely elected to keep their information confidential, the sheriff must withhold the information we have marked in the submitted documents, as well as the information we have noted within the submitted audio recordings, under section 552.117(a)(1); however, any cellular telephone numbers may only be withheld if the employees at issue pay for the services with their own funds. Conversely, to the extent the involved employees did not make timely elections under section 552.024 or the sheriff pays for the cellular telephone services, the sheriff may not withhold the information at issue under section 552.117(a)(1).

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. As noted above, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. Accordingly, to the extent the sheriff does not pay for the peace officer's cellular telephone service, the sheriff must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code. Conversely, if the sheriff pays for the peace officer's cellular telephone service, then the sheriff may not withhold the marked cellular telephone number under section 552.117(a)(2).

In summary, the sheriff must withhold the information we have marked in the submitted documents, as well as the types of information we have noted within the submitted audio recordings, under sections 552.101 and 552.102 of the Government Code in conjunction with common-law privacy. To the extent the employees at issue timely elected to keep their information confidential, the sheriff must withhold information we have marked in the submitted documents, as well as the information we have noted within the submitted audio recordings, under section 552.117(a)(1); however, any cellular telephone numbers may only

¹The 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).

be withheld if the employees at issue pay for the services with their own funds. To the extent the sheriff does not pay for the peace officer's cellular telephone service, the sheriff must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code. 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 385385

Enc. Submitted documents

c: Requestor
(w/o enclosures)