



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 9, 2011

Ms. Michelle Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469-3108

OR2011-03279

Dear Ms. Rangel:

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# 412847.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for the personnel files of a named deputy and two named detectives. You indicate the sheriff has released some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excluded from his request home addresses and phone numbers, social security numbers, and driver's license numbers. Thus, these types of information in the submitted documents are not responsive to the request for information, and the sheriff is not required to release this information, which we have marked, in response to this request.

You assert some of the submitted information is excepted from disclosure under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 1701.454 of the Occupation Code governs the release of reports or statements submitted to the Texas

Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") and provides as follows:

(a) 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.

(b) Except as provided by this subchapter, a commission member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. Exhibit C consists of F-5 forms (Report of Separation of License Holder), which are made confidential by section 1701.454 of the Occupations Code. Therefore, we agree the sheriff must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007(c) provides as follows:

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). You claim a portion of an employment application in Exhibit B is confidential under section 58.007. However, the employment application does not consist of a juvenile law enforcement record for purposes of section 58.007. Therefore, none of the information in Exhibit B is confidential under section 58.007(c) of the Family Code, and the sheriff may not withhold it under section 552.101 of the Government Code on that basis.

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.¹ 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.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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). 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 found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Exhibit B contains personal financial information that is not of legitimate concern to the public. *See* Open Records Decision Nos. 620 (1993), 600. Exhibit B also contains other information that is highly intimate or embarrassing and is not of legitimate concern to the public. Therefore, the sheriff must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Finally, you assert some of the information in Exhibit D is excepted under section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle title or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(2). Accordingly, the sheriff must withhold the Texas vehicle identification number we have marked under section 552.130.

To conclude, the sheriff must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff must also withhold the information we have marked under section 552.102 of the Government Code,

¹The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

section 552.101 of the Government Code in conjunction with common-law privacy, and section 552.130 of the Government Code. The sheriff must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 412847

Enc. Submitted documents

c: Requestor
(w/o enclosures)