



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2011

Deputy Rocky Bright  
Ector County Sheriff's Office  
P.O. Box 2066  
Odessa, Texas 79760

OR2011-06519

Dear Deputy Bright:

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# 419369.

The Ector County Sheriff's Office (the "sheriff") received a request for the personnel file, correspondence, complaints, and commendations regarding a named sheriff employee. You state you have released some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 made confidential by other statutes, such as section 1324a of title 8 of the United States Code. This section provides that an Employment Eligibility Verification I-9 Form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The submitted information contains an I-9 form. Release of this document in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we find the submitted I-9 form, which we have marked, is confidential under section 1324a of title 8 of the United States Code and must only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses the common-law right of privacy, which protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that 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) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Further, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision Nos. 600 (1992) (identifying public and private portions of certain state personnel records), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 523 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.— El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released along with the statement of the accused under *Ellen*, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. We note that supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context. Further, since common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance, the identity of the individual accused of sexual harassment is not protected from public disclosure. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

A portion of the remaining information pertains to an allegation of sexual harassment. Upon review, we find the information at issue does not contain an adequate summary of the sexual harassment investigation. Because there is no adequate summary of the investigation, any information pertaining to the sexual harassment investigation must generally be released. However, the information at issue contains the identity of the alleged sexual harassment victim. Accordingly, we conclude the sheriff must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. We also find that portions of the remaining information are highly intimate or embarrassing and not of legitimate public interest. Therefore, the sheriff must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, you have failed to demonstrate any portion of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

We note a portion of the remaining information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.<sup>1</sup> 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 552.117(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. It is unclear whether the individual whose personal information is at issue is currently a licensed peace officer, as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individual at issue is a licensed peace officer, then the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

If the individual at issue is not a licensed peace officer, then the personal information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See id.* §§ 552.117, .024. Whether a

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. To the extent the individual whose personal information is at issue timely requested confidentiality under section 552.024, the sheriff must withhold the information we have marked under section 552.117(a)(1). Conversely, to the extent this individual did not make a timely election under section 552.024, the sheriff may not withhold the marked information under section 552.117(a)(1) of the Government Code.<sup>2</sup>

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1). Thus, the sheriff must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.

In summary, the sheriff must withhold: (1) the marked Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (2) the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*; (3) the information we have marked under section 552.101 in conjunction with common-law privacy; and (4) the information we have marked under section 552.102(a) of the Government Code. To the extent the individual at issue is a licensed peace officer, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual at issue is not a licensed peace officer, then to the extent the individual timely requested confidentiality under section 552.024 of the Government Code, the sheriff must withhold the marked information under section 552.117(a)(1) of the Government Code. The sheriff must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.<sup>3</sup> 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.

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<sup>2</sup>We note that regardless of the applicability of section 552.117, 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.

<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code as well as a Texas driver's license number under section 552.130 of the Government Code.

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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/bs

Ref: ID# 419369

Enc. Submitted documents

c: Requestor  
(w/o enclosures)