



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2011

Mr. Robert J. Davis
Matthews, Stein, Shiels, Pearce, Knott, Eden, & Davis, L.L.P.
For Collin County
8131 LBJ Freeway, Suite 700
Dallas, Texas 75251

OR2011-08934

Dear Mr. Davis:

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# 421336 (Collin County Sheriff No. 1600-64005).

The Collin County Sheriff's Office (the "sheriff"), which you represent, received a request for information related to the termination of a named former employee, the named former employee's personnel files, all disciplinary actions against all Collin County officers for the past five years for misconduct under Detention Police Section 110.108(a) and (b), and all documents related to specific types of investigations. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.1175, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Portions of the submitted information, which we have marked, consist of completed reports, evaluations, and investigations. This information falls within the purview of subsection 552.022(a)(1). The sheriff may only withhold the completed reports, evaluations, and investigations if they are excepted from disclosure under section 552.108 of the Government Code or are expressly made confidential under other law. You claim the submitted information is excepted from disclosure under section 552.103. However, section 552.103 is a discretionary exception that protects a governmental body's interests. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not "other law" for purposes of section 552.022(a)(1). Therefore, the sheriff may not withhold the information subject to section 552.022(a)(1) under section 552.103. However, information subject to section 552.022(a)(1) may be excepted under section 552.108 of the Government Code. You also claim the submitted information is excepted under section 552.101 in conjunction with the common-law informer's privilege. The common-law informer's privilege is "other law" for the purpose of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Env'tl Quality v. Abbot*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Further, because sections 552.101, 552.102, 552.117, 552.1175, and 552.119 of the Government Code are "other law" for purposes of sections 552.022, we will address the applicability of these exceptions for all of the information subject to section 552.022. We will also address your claims for the information not subject to section 552.022.

We first address section 552.103 of the Government Code for the information not subject to section 552.022 of the Government Code. Section 552.103 provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Thomas*

v. Cornyn, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). To establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990); see Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You inform us that the requestor is an attorney who has been hired by the named former employee to appeal the former employee's termination. You explain that the requestor has filed a grievance with the sheriff on behalf of his client and that this is "a mandatory precursor to any later legal challenge." You also state that in a letter to the sheriff, on the same date the request was received, the requestor alleges that his client's procedural and substantive rights and federal law were violated in relation to the former employee's termination. Based on these representations, we agree that the sheriff reasonably anticipated litigation on the date it received this request. Furthermore, we agree the information not subject to section 552.022 relates to the anticipated litigation. Therefore, the sheriff may generally withhold the information not subject to section 552.022 under section 552.103 of the Government Code.

We note, however, the requestor's client, who is also the potential opposing party, appears to have seen or had access to some of the information at issue. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. See ORD 551 at 4-5. Thus, when the opposing party has seen or had access to information relating to anticipated litigation, there is no interest in withholding that information from public disclosure under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, with the exception of information seen by the requestor, the sheriff may withhold the information at issue under section 552.103. We note that the applicability of section 552.103 ends once the related litigation concludes or is no longer anticipated. See Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We next address your arguments for the information subject to section 552.022(a)(1) and any information the requestor has seen or had access to. We first address section 552.108 as this exception is potentially the most encompassing for that information. Section 552.108 provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. Subsection 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with ongoing law enforcement and prosecution efforts in general. A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor)*. In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g., Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known)*. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor)*.

The information you seek to withhold under section 552.108 relates to internal affairs investigations. Section 552.108 is generally not applicable to information relating to an

administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You do not inform us that any of the information at issue pertains to pending criminal investigations by the sheriff. You have also failed to explain how the release of this information would interfere with current and future law enforcement and crime prevention efforts. Accordingly, you have not demonstrated how release of this information would interfere with the detection, investigation, or prosecution of particular crimes for purposes of subsection 552.108(a)(1) or with law enforcement efforts in general for purposes of subsection 552.108(b)(1). Thus, the sheriff may not withhold any portion of the information at issue under subsection 552.108(a)(1) or subsection 552.108(b)(1).

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 statute, such as section 1703.306 of the Occupations Code, which provides in part:

(a) 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 other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306. The information at issue contains information acquired from polygraph examinations. We note the sheriff has the discretion to release the polygraph information of the requestor’s client, which we have marked, pursuant to section 1703.306(a)(1). *See* Open Records Decision No. 481 at 9 (1987) (statutory predecessor to Occ. Code § 1703.306 permitted, but did not require, examination results to be disclosed to polygraph examinees). The sheriff must withhold the polygraph information pertaining to other individuals, which we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov’t § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may

not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find portions of the information at issue, which we have marked, consist of CHRI that is confidential under section 411.083. Thus, the sheriff must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. 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. *See id.* at 683. We understand you to argue the identifying information of witnesses and victims in the investigations are confidential under section 552.101 of the Government Code in conjunction with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of sexual harassment. Here, however, the information at issue does not relate to an investigation of sexual harassment. Because the information does not concern sexual harassment, we find *Ellen* is not applicable in this instance. Consequently, the sheriff may not withhold any of the information at issue under section 552.101 in conjunction with common-law privacy on the basis of *Ellen*.

You also claim common-law privacy for the remaining information. This office has found some kinds of medical information or information indicating disabilities or specific illnesses is protected by common-law privacy. *See Open Records Decisions Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* This office has also determined common-law privacy protects certain types of personal financial information. Financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public*

disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (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 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). We note this office has stated, in numerous decisions, information pertaining to the work conduct, job performance, and qualifications 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. 470 (public employee's job performance does not generally constitute employee's private affairs), 455 (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).

Upon review of the information at issue, we find the information we have marked constitutes information that is highly intimate or embarrassing and not a matter of legitimate public interest. Thus, the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate concern to the public. Consequently, the sheriff may not withhold any of the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. Open Records Decision No. 515 at 3 (1988). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 JOHN H. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. However, the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 at 1-2 (1978).

You assert some of the remaining information at issue should be withheld under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we note, and you acknowledge, and the information itself reveals the subject of the complaint knows the identity of the complainant. *See id.* In addition, we note a witness who provides information in the course of an investigation, but does not make the initial report of a violation, is not an informant for purposes of the common-law informer's

privilege. We therefore conclude the sheriff has failed to demonstrate the applicability of the common-law informer's privilege, in this instance. Thus, the sheriff may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with the informer's privilege.

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). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court recently expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163, at *5 (Tex. Dec. 3, 2010). The Supreme Court then considered the applicability of section 552.102, and has 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. *Id.* at *10. Having carefully reviewed the remaining 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 the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.¹ Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)); *see also* Open Records Decision No. 670 at 6 (2001) (determining that a governmental body may withhold the home addresses and telephone numbers, personal cellular information and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision). 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). To the extent the information we have marked under section 552.117 relates to employees of the sheriff who are currently licensed peace officers, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

To the extent the employees concerned are not licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers,

¹"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Whether a 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 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 current or former employees timely elected confidentiality under section 552.024, the sheriff must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If, however, the current or former employees did not timely elect to keep their personal information confidential, the marked personal information may not be withheld under section 552.117(a)(1).

To the extent subsection 552.117(a)(2) or subsection 552.117(a)(1) are not applicable to the information we have marked, the personal information may be excepted under section 552.1175 of the Government Code, which provides in part the following:

(a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure; [and]
- (2) county jailers as defined by Section 1701.001, Occupations Code[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure or a county jailer as defined by Section 1701.001, Occupations Code], 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.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). To the extent the information we marked relates to county jailers as defined by section 1701.001 of the Occupations Code or licensed peace officers of other governmental entities, the sheriff must withhold this information under section 552.1175, if the individuals to whom the marked information pertains elect to restrict

access to the information in accordance with section 552.1175(b). Conversely, if the marked information does not pertain to county jailers or peace officers or the county jailers or peace officers do not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

Section 552.119 of the Government Code provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. The information at issue does not contain any photographs of peace officers. Accordingly, none of the information at issue may be withheld under section 552.119 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state or another state or country.² Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The sheriff must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Upon review, we

²The 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).

find the sheriff must withhold the credit card numbers we have marked in the remaining information at issue under section 552.136 of the Government Code.

In summary, to the extent the requestor has not seen or had access to the information not subject to section 552.022(a)(1), the sheriff may withhold it under section 552.103 of the Government Code. The sheriff must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code, but has discretion to release the requestor's client's polygraph information pursuant to section 1703.306(a)(1) of the Occupations Code. The sheriff must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code and common-law privacy. The sheriff must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent the information we have marked under section 552.117 relates to employees of the sheriff who are currently licensed peace officers, the sheriff must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the current or former employees timely elected confidentiality under section 552.024, the sheriff must withhold the information we have marked under section 552.117(a)(1) of the Government Code. To the extent the information we marked relates to county jailers as defined by section 1701.001 of the Occupations Code or licensed peace officers of other governmental entities, the sheriff must withhold this information under section 552.1175, if the individuals to whom the marked information pertains elect to restrict access to the information in accordance with section 552.1175(b). The sheriff must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and the credit card numbers we have marked under section 552.136 of the Government Code.³ The remaining information must be released.⁴

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.

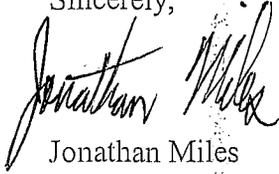
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

³We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code and credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code §552.023. Because such information is confidential with respect to the general public, if the sheriff receives another request for this information from a different requestor, the sheriff should again seek a ruling from this office. 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. Gov't Code §552.147(b). However, section 552.147 is based on privacy principles; therefore, the requestor has a right of access to her client's social security number. See *generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 421336

Enc. Submitted documents

c: Requestor
(w/o enclosures)