



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 21, 2012

Ms. Cheryl Elliott Thornton  
Assistant County Attorney  
Harris County  
1019 Congress, 15th Floor  
Houston, Texas 77002

OR2012-04173

Dear Ms. Thornton:

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# 448172 (CA File # 12PIA0012).

The Harris County Constable's Office, Precinct 5 (the "constable's office") received a request for the full investigation of a named deputy. You claim the submitted information is excepted from disclosure under sections 552.102, 552.111, and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the constable's office did not fully comply with section 552.301 of the Government Code. Section 552.301(b) requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business-day after the date of receiving the written request." Gov't Code § 552.301(b). While the constable's office raised sections 552.102 and 552.111 within the ten-business-day time period as required by subsection 552.301(b), the constable's office did not raise section 552.117 until after the ten-business-day deadline had passed. Generally, if a governmental body fails to

---

<sup>1</sup>Although you also claim section 552.1175 of the Government Code for portions of the submitted information, we note section 552.117 is the proper exception in this instance for information held by the constable's office in an employment capacity.

timely raise an exception, that exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Because section 552.117 is a mandatory exception to disclosure and may not be waived, we will consider the applicability of section 552.117, as well as the timely-raised exceptions, for the submitted information. *See Gov't Code* §§ 552.007, .301, .302, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or 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). The submitted information consists of completed investigations that are subject to subsection 552.022(a)(1). The constable's office must release the completed investigations pursuant to subsection 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). You seek to withhold the submitted information under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception and does not make information confidential under the Act. *See Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37* (providing for "confidentiality" of information under specified exceptions); *see also* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the submitted information may not be withheld under section 552.111 of the Government Code. However, as sections 552.102 and 552.117 of the Government Code make information confidential under the Act, we will consider your arguments under these sections for the submitted information. We will also consider the applicability of sections 552.101 and 552.130 of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public.

---

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

*Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* at 683. 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 No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). This office has also 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), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989). We note the scope of a public employee's privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the constable's office must withhold the marked information under section 552.101 of the Government Code in conjunction with 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." 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.*, 354 S.W.3d 336 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked information that must be withheld under section 552.102(a) of the Government Code. However, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the constable's office may not withhold any of the remaining information on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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. *See* 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. 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). We further note section 552.117(a)(2) is not applicable to a former spouse and does not protect

the fact that a governmental employee has been divorced. In this instance, the information at issue concerns an individual who is no longer employed by the constable's office, and it is unclear whether this individual is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the constable's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12 or a governmental body pays for the cellular telephone service, then the constable's office may not withhold the marked information under section 552.117(a)(2).

If the individual whose information is at issue is no longer a licensed peace officer, then his 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 address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12 and the individual timely requested confidentiality under section 552.024, the constable's office must withhold the information we have marked under section 552.117(a)(1); however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual at issue did not timely request confidentiality under section 552.024 or a governmental body pays for the cellular telephone service, the constable's office may not withhold the marked information under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. Accordingly, the constable's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the constable's office must withhold the information we marked under sections 552.101 in conjunction with common-law privacy, 552.102, and 552.130 of the Government Code. If the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the constable's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12 and the individual timely requested confidentiality under section 552.024, the constable's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the marked cellular telephone number may be withheld under section 552.117 of the Government Code only if a governmental body does not pay for the cellular telephone service. 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](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/som

Ref: ID# 448172

Enc. Submitted documents

c: Requestor  
(w/o enclosures)