



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

Chief Deputy Stephen L. Girsh
Hill County Sheriff's Office
P.O. Box 283
Hillsboro, Texas 76645

OR2012-14143

Dear Chief Deputy Girsh:

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# 464111.

The Hill County Sheriff's Office (the "sheriff's office") received a request for all incoming and outgoing e-mails for four named sheriff's office employees for a specified time period.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.109, and 552.111 of the Government

¹You state the sheriff's office received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it was created outside the time period specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff's office need not release such information in response to this request.

Next, we note some of the responsive information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-13952 (2012). In Open Records Letter No. 2012-13952, we ruled the sheriff's office: (1) may withhold certain information under section 552.103 of the Government Code; (2) must withhold certain information under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, under section 552.101 of the Government Code in conjunction with common-law privacy, and under section 552.102(a), section 552.117(a)(2), section 552.117(a)(1), section 552.130, section 552.136, and section 552.137 of the Government Code; and (3) must release the remaining information. You now raise sections 552.103, 552.107, 552.108, and 552.111 of the Government Code for some of the responsive information that may have been at issue in the previous ruling. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007; *Open Records Decision No. 518 at 3 (1989)*; *see also Open Records Decision No. 400 (1983)* (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the sheriff's office may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise sections 552.103, 552.107, 552.108, and 552.111 for some of the responsive information, these sections do not prohibit the release of information or make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *Open Records Decision Nos. 676 at 10-11*

²Although you originally raised section 552.102 in your initial brief to this office, you make no arguments to support this exception. Accordingly, we assume the sheriff's office no longer asserts this exception. *See Gov't Code* § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information).

³This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See Gov't Code* §§ 552.301(e)(1)(D), .302; *Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988)*.

(2002) (attorney-client privilege under section 552.107(1) may be waived), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, to the extent any portion of the responsive information was previously released in accordance with Open Records Letter No. 2012-13952, the sheriff's office may not now withhold such information under section 552.103, section 552.107, section 552.108, or section 552.111. As we have no indication the law, facts, and circumstances on which Open Records Letter No. 2012-13952 was based have changed, the sheriff's office must continue to rely on that ruling as a previous determination and withhold or release any identical responsive information in accordance with that ruling. *See* ORD 673 (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the responsive information is not identical to information that was subject to Open Records Letter No. 2012-13952, we will address your arguments under sections 552.101, 552.103, 552.107, 552.108, 552.109, and 552.111.

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. This exception encompasses information that other statutes make confidential, such as section 418.177 of the Government Code. Section 418.177 was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.177 provides as follows:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). We note portions of the responsive information pertain to alerts prepared by the Federal Bureau of Investigation and the Texas Department of Public Safety analyzing and assessing various security threats, concerns, and vulnerabilities. Upon review, we find the information we have marked was collected, assembled, or maintained by or for a

governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See* Gov't Code § 418.177. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 in conjunction with section 418.177 of the Government Code.⁴

We note the responsive information also contains confidential criminal history record information ("CHRI"). Section 552.101 of the Government Code also encompasses laws that make CHRI confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the sheriff's office must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

You claim that some of the responsive information is protected under section 552.103 of the Government Code. Section 552.103 of the Government Code provides in 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.

...

⁴As our ruling is dispositive, we need not address the sheriff's office's arguments against disclosure of this information.

(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.

Id. § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See 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.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Open Records Decision No. 551 at 4 (1990).*

To demonstrate that litigation is reasonably anticipated, the governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *Open Records Decision No. 452 at 4 (1986)*. 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.⁵ *Open Records Decision No. 555 (1990)*; *see also Open Records Decision No. 518 at 5 (1989)* (litigation must be “realistically contemplated”). On the other hand, this office has determined that 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)*. We also note that 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. *See Open Records Decision No. 361 (1983)*. In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect that litigation is “realistically contemplated.” *See ORD 518 at 5*; *see also Attorney General Opinion MW-575 (1982)* (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See ORD 452 at 4*.

⁵In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see Open Records Decision No. 336 (1982)*; hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see Open Records Decision No. 346 (1982)*; and threatened to sue on several occasions and hired an attorney, *see Open Records Decision No. 288 (1981)*.

You generally state some of the responsive information pertains to “various matters involving litigation and legal opinions involving [Hill County] and [the sheriff’s office].” You also generally state some of the information at issue pertains to anticipated litigation between the requestor’s wife and the sheriff’s office. Upon review, we find you have failed to demonstrate the sheriff’s office reasonably anticipated litigation or was involved in any specific pending litigation when the request for information was received. Accordingly, the sheriff’s office may not withhold any of the responsive information under section 552.103.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov’t Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. ORD 676 at 6-7. First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies to only communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies to only a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

Based on your reference to the attorney-client privilege, we understand you to raise section 552.107(1) for the information in Exhibit A-1. You generally state the information at issue consists of e-mails between the Sheriff of Hill County (the “sheriff”) and “attorneys representing the County, State, or other parties involved in legal litigation.” Other than the

sheriff, you do not identify any of the parties to the communications at issue or demonstrate how they are privileged parties. *See* ORD 676 at 8 (governmental body must inform this office of identities and capacities of individuals to whom each communication at issue has been made; this office cannot necessarily assume that communication was made among only categories of individuals identified in rule 503); *see generally* Gov't Code § 552.301(e)(1)(A). Furthermore, you do not explain whether or how the communications at issue were made for the purpose of facilitating the rendition of professional legal services to the sheriff's office. *See* TEX. R. EVID. 503(b)(1). Therefore, we conclude you have failed to establish how the information at issue in Exhibit A-1 constitutes communications between or among sheriff's office employees and attorneys for the purposes of section 552.107(1). Thus, the sheriff's office may not withhold the information at issue in Exhibit A-1 under section 552.107(1).

You assert that some of the responsive information is excepted under section 552.108 of the Government Code, which provides the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

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

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

(3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(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 the requirements of Section 552.021 if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
- (3) the internal record or notation:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)-(b). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You generally state that Exhibit A-2 pertains to "criminal activities or investigations" and that the information in Exhibit B-2 pertains to "criminal investigation" or "involv[es] sensitive law enforcement and criminal justice information." A governmental body claiming subsection 552.108(a)(1) or 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); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You do not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, you have failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(b)(1). A governmental body claiming subsection 552.108(a)(2) or subsection 552.108(b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2), (b)(2). You have not explained how the information at issue pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, you have failed to demonstrate the applicability of either subsection 552.108(a)(2) or subsection 552.108(b)(2). Subsection 552.108(a)(3) is also inapplicable as the information at issue does not relate to a threat against a police officer. *See id.* § 552.108(a)(3). Lastly, you do not assert that the information at issue was prepared by an attorney representing the state or that it reflects the mental impressions or legal reasoning of an attorney representing the state. *See id.* § 552.108(a)(4), (b)(3). Therefore, the sheriff's office may not withhold any of the information at issue under section 552.108.

Section 552.109 of the Government Code exempts from disclosure "[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which

would constitute an invasion of privacy[.]” *Id.* § 552.109. This office has held the test to be applied to information under section 552.109 is the same as the common-law privacy standard under section 552.101 of the Government Code, which protects information if it (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). Upon review, we find you have failed to demonstrate how any of the remaining responsive information constitutes highly intimate or embarrassing information that is of no legitimate concern to the public. Therefore, the sheriff’s office may not withhold any of the responsive information under section 552.109.

Section 552.111 of the Government Code excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. Section 552.111 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995). However, a governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking). Further, section 552.111 does not generally except from disclosure facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You explain the responsive information in Exhibit A-4 constitutes internal agency memoranda between sheriff’s office employees regarding an interaction between a

subordinate employee and a member of the public. As previously stated, the deliberative process privilege only excepts communications pertaining to administrative and personnel matters of a broad scope that affect a governmental body's policy mission. *See* ORD 631 at 3. Upon review, the information reflects it pertains to administrative and personnel issues involving only one sheriff's office employee, and you have not explained how the information pertains to administrative or personnel matters of a broad scope that affect the policy mission of the sheriff's office. Therefore, you have failed to demonstrate how the deliberative process privilege applies to the information at issue. Accordingly the sheriff's office may not withhold any of the responsive information at issue under section 552.111.

We note portions of the responsive information are subject to section 552.117 of the Government Code.⁶ Section 552.117 applies to records a governmental body holds in an employment capacity and 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 section 552.024 or section 552.1175 of the Government Code.⁷ Gov't Code § 552.117(a)(2). Additionally, section 552.117(a)(2) encompasses a peace officer's personal cellular telephone number, provided the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024); *cf.* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). If the individual whose information is at issue is currently licensed a peace officer as defined by article 2.12, the sheriff's office must withhold the cellular telephone number we have marked under subsection 552.117(a)(2) if the officer paid for his own cellular service.⁸ If, however, the officer at issue is not currently licensed peace officer or the cellular service is paid for with governmental funds, the information we have marked may not be withheld under subsection 552.117(a)(2).

⁶The 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).

⁷"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁸We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

Section 552.1175 of the Government Code applies to information pertaining to peace officers that the sheriff's office does not hold in an employment context and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, 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.

Gov't Code § 552.1175(a)(1), (b). Section 552.1175 is also applicable to personal pager and cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Upon review, we conclude the sheriff's office must withhold the cellular telephone number we have marked under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b). However, the sheriff's office may withhold this information only if the cellular service is not paid for with government funds. If the individual is no longer a licensed peace officer or no election is made the sheriff's office may not withhold the individual's information under section 552.1175 of the Government Code.

We note some of the remaining responsive information is subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We find the sheriff's office must withhold the driver's license number we have marked under section 552.130.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c).

Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.⁹

In summary, the sheriff's office must continue to rely on Open Records Letter No. 2012-13952 as a previous determination and withhold or release any identical responsive information in accordance with that ruling. The sheriff's office must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code; (2) the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (3) the information we have marked under section 552.117(a)(2) of the Government Code if the officer whose information is at issue is currently a licensed peace officer as defined by article 2.12 and the cellular service is not paid for by a governmental body; (4) the cellular telephone number we have marked under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer, elects to restrict access to his information, and the cellular service is not paid for by a governmental body; (5) the driver's license number we have marked under section 552.130 of the Government Code; and (6) the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The sheriff's office must release the remaining responsive information.¹⁰

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.

⁹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

¹⁰We note the remaining responsive information contains a social security number. 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).

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 464111

Enc. Submitted documents

c: Requestor
(w/o enclosures)