



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2014

Mr. Glen D. Dunbar
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2014-03730

Dear Mr. Dunbar:

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# 515737.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for the personnel files of two named deputies. The sheriff's office claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the submitted information contains the Texas Commission on Law Enforcement Officer Standards and Education ("commission") identification numbers of peace officers. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the commission website. Accordingly, we find the commission identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification numbers

are not subject to the Act and the sheriff's office is not required to release them to the requestor.¹

We next note most of the responsive information pertaining to one of the named officers was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-08187 (2013). In Open Records Letter No. 2013-08187, we determined the sheriff's office must withhold information under section 552.101 of the Government Code in conjunction with common-law privacy and under sections 552.102(a), 552.117(a)(2), and 552.130(a)(1) of the Government Code, but must release the remaining information at issue. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the sheriff's office must continue to rely on Open Records Letter No. 2013-08187 as a previous determination and withhold or release the identical information in accordance with that ruling.² We will address your arguments against the release of the submitted information not encompassed by Open Records Letter No. 2013-08187.

Next, we note you have redacted portions of the remaining information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). It appears you have redacted some of this information pursuant to Open Records Decision No. 670 (2001), which authorizes all governmental bodies to withhold certain information relating to a peace officer under section 552.117(a)(2) of the Government Code without requesting a decision from this office. *See* ORD 670 at 6-7. In addition, we understand you have redacted information pursuant to subsection 552.130 of the Government Code.³ However, you have also redacted other information, including dates of birth. You do not state the sheriff's office is authorized to withhold this redacted information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Therefore, the sheriff's office must submit this

¹As we are able to make this determination, we need not address your argument against the disclosure of this information.

²*See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). As our ruling is dispositive, we do not address your arguments to withhold this information.

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

information in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. Because we are unable to discern the nature of some of the redacted information, the sheriff's office has failed to comply with section 552.301, and such information is presumed public under section 552.302. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Thus, we conclude that the sheriff's office must release the information we have marked. However, we will address the remaining redacted information, as we are able to discern the nature of this 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." *Id.* § 552.101. This section encompasses information protected by other statutes. The submitted information contains an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the 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. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude the sheriff's office must withhold the submitted I-9 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 of the Government Code also encompasses section 550.065 of the Transportation Code. The submitted information also contains accident reports that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c) or (e), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.⁴ *Id.* The requestor has not provided the sheriff's office with two of the three pieces of information for any of the accident reports at issue. Thus, the sheriff's office must withhold these accident reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the

⁴Transp. Code § 550.0601 ("department" means Texas Department of Transportation).

commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. Upon review, we find you have failed to establish any of the remaining information was submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Therefore, we conclude you have not established any of the remaining information is confidential under section 1701.454 and the sheriff's office may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of 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. *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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

We note the submitted information includes information excepted from disclosure under section 552.102(a) of the Government Code.⁵ 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 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. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 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 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.⁶ Gov’t Code § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone or pager number, provided a governmental body does not pay for the cellular telephone service. *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 have marked personal information of one of the deputies at issue that the sheriff’s office must withhold under section 552.117(a)(2) of the Government Code. However, the sheriff’s office may only withhold the marked pager number under section 552.117(a)(2) if the pager service was not provided to the deputy at issue at public expense.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. The remaining documents contain information pertaining to peace officers who do not work for the sheriff’s office. The sheriff’s office must withhold the information we have marked under section 552.1175 if the individuals at issue are licensed peace officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the sheriff’s office may not withhold this information under section 552.1175 if the individuals either are not currently licensed peace officers or do not elect to restrict access to this information in accordance with section 552.1175(b).

Section 552.130(a) of the Government Code provides the following:

⁵The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions.

⁶“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Id. § 552.130(a). The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

The remaining information contains e-mail addresses of members of the public. 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). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the sheriff's office must withhold the e-mail addresses we have marked under section 552.137.⁷

To conclude, the sheriff's office is not required to release the submitted commission identification numbers. The sheriff's office must continue to rely on Open Records Letter No. 2013-08187 as a previous determination and withhold or release the identical 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 1324a of title 8 of the United States Code, section 550.065(b) of the Transportation Code, and common-law privacy; (2) the information we have marked under sections 552.102, 552.130, and 552.137 of the Government Code; (3) the information we have marked under section 552.117(a)(2) of the

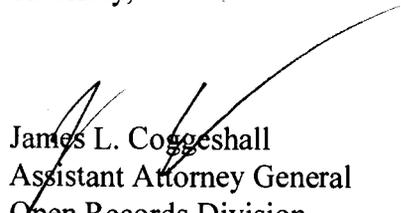
⁷This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

Government Code; however, the sheriff's office may only withhold the marked pager number under section 552.117(a)(2) if the pager service was not provided to the employee at issue at public expense; and (4) the information we have marked under section 552.1175 of the Government Code if the individuals at issue are licensed peace officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The sheriff's office must provide the remaining information to the requestor, including the information we have marked for release.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 515737

Enc. Submitted documents

c: Requestor
(w/o enclosures)