



February 10, 2015

Ms. Jennifer Matte
Assistant County Attorney
County of Harris
1019 Congress Street, 15th Floor
Houston, Texas 77002

OR2015-02602

Dear Ms. Matte:

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# 556242 (C.A. File No. 14 PIA0377).

The Harris County Constable Precinct One (the "constable's office") received a request for information pertaining to two named deputies. The constable's office claims the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note the requestor specifically excludes from her request social security numbers, driver's license numbers, and home addresses. Thus, such information in the submitted documents is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the constable's office need not release such information in response to the request.

We also note the responsive information contains the Texas Commission on Law Enforcement ("commission") identification numbers of peace officers.¹ In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source

¹The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. See Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

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 submitted commission identification numbers are not subject to the Act and the constable's office is not required to release them in response to the request.²

Next, we note 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. 2015-01258 (2015). In Open Records Letter No. 2015-01258, we determined the constable's office may withhold the requested information under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the constable's office may continue to rely on Open Records Letter No. 2015-01258 as a previous determination and withhold the responsive information pertaining to this officer in accordance with that ruling.³ Nevertheless, we will address your arguments against the release of the responsive information pertaining to the other named officer, which is not encompassed by Open Records Letter No. 2015-01258.

The constable's office acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301(b) of the Government Code. A governmental body's failure to comply with the procedural requirements of section 552.301(b) results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.108 is a discretionary

²As we are able to make this determination, we need not address your argument against the disclosure of this information.

³*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).

exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (2000) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). *But see* Open Records Decision No. 586 at 2-3 (1991) (claim of another governmental body under statutory predecessor to section 552.108 can provide compelling reason for non-disclosure). Thus, the claim of the constable's office under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the constable's office may not withhold any of the responsive information that is not encompassed by Open Records Letter No. 2015-01258 under section 552.108. However, sections 552.101, 552.102, 552.117, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome this presumption.⁴ Accordingly, we will consider whether these sections require the constable's office to withhold the information at issue.

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 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 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). Upon review, we find some of the responsive information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the constable's office must withhold the information we have marked 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 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.

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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.⁵ Gov't Code § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone 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 a peace officer that the constable's office must withhold under section 552.117(a)(2) of the Government Code; however, the constable's office may only withhold the cellular telephone number marked under section 552.117(a)(2) if the cellular telephone service was not provided to the officer at public expense.

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, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The constable's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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 address at issue does not appear to be of a type specifically excluded by section 552.137(c), and the constable's office does not inform us a member of the public has affirmatively consented to its release. Therefore, the constable's office must withhold the e-mail address we have marked under section 552.137 of the Government Code.

To conclude, the constable's office is not required to release the submitted commission identification numbers. The constable's office may continue to rely on Open Records Letter No. 2015-01258 as a previous determination and withhold the information pertaining to the officer whose information was at issue in that ruling. For the documents pertaining to the other officer, the constable's office must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we have marked under section 552.117(a)(2) of the Government

⁵"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

Code; however, the constable's office may only withhold the cellular telephone number marked on that ground if the cellular telephone service was not provided to the officer at public expense; (3) withhold the information we have marked under sections 552.102(a), 552.130, and 552.137 of the Government Code; and (4) release the remaining responsive information.

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/cbz

Ref: ID# 556242

Enc. Submitted documents

c: Requestor
(w/o enclosures)