



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2016

Ms. Katherine Hudson  
County Treasurer  
Wise County  
P.O. Box 554  
Decatur, Texas 76234

OR2016-09308

Dear Ms. Hudson:

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# 607233.

Wise County and the Wise County Sheriff's Office (collectively the "county") received a request for employment and disciplinary records related to a named former employee. You claim the submitted information is excepted from disclosure under section 552.102 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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

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<sup>1</sup>We note the county did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(e). Nonetheless, because sections 552.102 and 552.117 can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

personal privacy[.]” *Id.* § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Texas Supreme Court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. 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 the remaining information is not subject to section 552.102(a), and the county may not withhold it 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.<sup>3</sup> *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. Upon review, we find the remaining information contains the named former employee’s social security number. However, it is unclear whether this individual is a currently licensed peace officer as defined by article 2.12. Accordingly, to the extent this individual is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the county must withhold the social security number we have marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual is not a currently licensed peace officer as defined by article 2.12, then the county may not withhold this information under section 552.117(a)(2) of the Government Code.

If the individual is not a currently licensed peace officer, then his social security number may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, 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 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the county may only withhold information under section 552.117 on behalf of a current or former official or

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<sup>3</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).

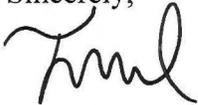
employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, to the extent the individual timely requested confidentiality under section 552.024 of the Government Code, the county must withhold must withhold the social security number we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual did not timely request confidentiality under section 552.024, then the county may not withhold this information under section 552.117(a)(1).<sup>4</sup>

In summary, the county must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent the individual at issue is a currently licensed peace officer as defined by article 2.12, the county must withhold the social security number we have marked under section 552.117(a)(2) of the Government Code. If the individual at issue is not a currently licensed peace officer, then, to the extent the individual timely requested confidentiality under section 552.024 of the Government Code, the county must withhold must withhold the social security number we have marked under section 552.117(a)(1) of the Government Code. The county must release the remaining 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

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<sup>4</sup>In that event, the county may redact the individual's social security number pursuant to section 552.147(b) of the Government Code, which 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. See Gov't Code § 552.147(b).

Ref: ID# 607233

Enc. Submitted documents

c: Requestor  
(w/o enclosures)