



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 3, 2016

Ms. Angela Sessums  
Warrants Manager  
Wise County Sheriff's Office  
200 Rook Ramsey Drive  
Decatur, Texas 76234

OR2016-09956

Dear Ms. Sessums:

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# 608991.

The Wise County Sheriff's Office (the "sheriff's office") received a request for seven categories of information related to a named officer or a specified incident. You state the sheriff's office has released some information to the requestor. You state the sheriff's office does not possess information responsive to one category of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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). 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. Section 552.101 of the Government Code encompasses common-law privacy, 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). 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

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

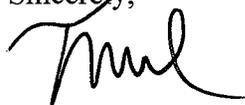
court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court expressly disagreed with *Hubert's* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *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 exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find you have failed to demonstrate the applicability of section 552.102(a) to any of the submitted information, and the sheriff's office may not withhold any of the submitted information on this basis.

Section 552.102(b) exempts from disclosure higher education transcripts of professional public school employees, but does not except the employee's name, the courses taken, and the degree obtained from disclosure. Gov't Code § 552.102(b); *see also* Open Records Decision No. 526 (1989). Upon review, we find none of the submitted information consists of higher education transcripts of a professional public school employee. Therefore, the sheriff's office may not withhold any of the submitted information under section 552.102(b) of the Government Code. As you raise no further exceptions to disclosure, the sheriff's office must release the submitted 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/bw

Ref: ID# 608991

Enc. Submitted documents