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ATTORNEY GENERAL OF TEXAS

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OR2016-16043

Dear Mr. Magee:

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# 618716.

The Victoria County Sheriff's Office (the "sheriff's office"), which you represent, received a request for e-mails a named deputy sent and received for a specified period of time. The sheriff's office states it has released some of the requested information, but claims the submitted information is either not subject to the Act, or excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, 552.117, 552.1175, 552.130, 552.137, 552.139, and 552.152 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹The sheriff's office informs us it no longer asserts sections 552.109 and 552.136 of the Government Code are applicable to the submitted information.

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The sheriff's office asserts some of the submitted information is not subject to the Act because it is purely personal in nature and not associated with business of the sheriff's office. Upon review, we agree this information, which the sheriff's office has indicated, does not constitute public information for purposes of section 552.002 of the Government Code. See Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, this information is not subject to the Act, and the sheriff's office is not required to release it in response to the request.

We next note some of the remaining information is subject to section 552.022(a)(3) of the Government Code, which provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public

information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The sheriff's office asserts this information is excepted from release under section 552.111 of the Government Code. However, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff's office may not withhold the information subject to section 552.022 under section 552.111. However, section 552.101 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of section 552.101 to the information at issue.

Section 552.108(b) excepts from disclosure “[a]n 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 . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov't Code § 552.108(b)(1). This section is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law

enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

The sheriff's office informs us the information it has indicated under section 552.108(b)(1) is integral to the operations of the United States Department of Homeland Security, the Texas Rangers, the Texas Department of Public Safety, the sheriff's office, and other state and federal law enforcement agencies to prevent, detect, and investigate criminal activities. The sheriff's office explains the information at issue pertains to the involvement of law enforcement agencies in response to an act of terrorism or related criminal activity and summaries regarding criminal organizations. The sheriff's office asserts the release of this information would reveal to criminals, including terrorists, cartels, and gangs, law enforcement efforts on the Texas border and identify vulnerabilities and aid such criminals in avoiding detection. Upon review, we find the release of some of the remaining information would interfere with law enforcement. Therefore, the sheriff's office may withhold this information, which we have marked or indicated, under section 552.108(b)(1) of the Government Code.² However, we conclude the sheriff's office has not established the release of any of the remaining information would interfere with law enforcement. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses sections 418.176 and 418.182 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.176(a) of the Government Code provides as follows:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or

²As our ruling is dispositive, we do not address the other arguments of the sheriff's office to withhold this information.

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider[.]

Id. § 418.176(a). Section 418.182(a) of the Government Code also provides, “information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.” *Id.* § 418.182(a). 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 provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The sheriff’s office asserts some of the remaining information is confidential under sections 418.176(a) and 418.182(a) because it was assembled for various federal and state law enforcement agencies for the purpose of preventing, detecting, and responding to an act of terrorism or related criminal activity. It also indicates some of this information is confidential under the HSA because the sheriff’s office uses the information to participate in a state-federal information sharing agreement to obtain federal funding. However, upon review, we find the sheriff’s office has failed to establish any of the remaining information was created for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity; that it relates to the staffing requirements or tactical plan of an emergency response provider; or that it consists of a list or compilation of pager or telephone numbers of an emergency response provider. Thus, the sheriff’s office has not established any of the remaining information is confidential under section 418.176(a) of the Government Code. *See id.* § 418.176(a). We also find the sheriff’s office has not established any of the remaining information relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. Thus, the sheriff’s office has not established any of the remaining information is confidential under section 418.182(a) of the Government Code. *See id.* § 418.182(a). Accordingly, the sheriff’s office may not withhold any of the remaining information under section 552.101 on either of those grounds.

The sheriff’s office raises section 552.101 in conjunction with the Health Insurance Portability and Accountability Act of 1996 for the information at issue. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health

Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act. Open Records Decision No. 681 (2004). In Open Records Decision No. 681, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *Id.*; *see* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. Therefore, we held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides in relevant part the following:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). Upon review, we find the sheriff's office has not established any of the remaining information consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. Thus, the remaining information is not confidential under the MPA, and the sheriff's office may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000. We understand Victoria County has a population greater than 20,000. Upon review, we find the sheriff's office has not established any of the remaining information consists of the originating telephone number or address of a 9-1-1 caller that was furnished by a service supplier. Accordingly, the sheriff's office has failed to demonstrate any of the remaining information is confidential under section or 772.318 of the Health and Safety Code, and may not withhold any of it under section 552.101 of the Government Code on that ground.

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). Upon review, we find none of the remaining information is excepted under section 552.102(a) of the Government Code. Accordingly, the sheriff's office may not withhold any of the remaining information may be withheld on that basis.

Section 552.111 of the Government Code excepts from disclosure "[a]n 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. This exception 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, writ ref'd n.r.e.); 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. *See* ORD 615 at 5. 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. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions 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).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* 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).

This office has also concluded a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

Section 552.111 can also encompass communications between a governmental body and a third-party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See id.* at 9.

The sheriff's office asserts the remaining information it has indicated under section 552.111 contains advice, opinions, and recommendations related to border and homeland security, including funding and assessments of security vulnerabilities. It also asserts some of this information addresses staffing and employment-related issues at the Victoria County Jail. Upon review, we find the sheriff's office has established the deliberative process privilege is

applicable to some of the information at issue, which we have marked. Therefore, the sheriff's office may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information either consists of factual information, relates to internal administrative or personnel matters that do not rise to the level of policymaking, or was communicated with parties the sheriff's office has not identified as sharing a privity of interest. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.111 and the deliberative process privilege.

The sheriff's office asserts section 552.117 of the Government Code is applicable to some of the remaining information. Section 552.117(a)(2) 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.³ 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). But an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See Open Records Decision No. 622 at 6 (1994)* (purpose of section 552.117 is to protect public employees from being harassed at home); *see also Open Records Decision No. 658 at 4 (1998)* (statutory confidentiality provision must be express and cannot be implied). It is unclear whether the current and former employees whose information we have marked under section 552.117 are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the employees at issue are currently licensed peace officer as defined by article 2.12; however, the sheriff's office may only withhold the cellular telephone numbers marked under section 552.117(a)(2) if the cellular telephone service was not provided to the employees at issue at public expense. If the employees at issue are no longer licensed peace officers as defined by article 2.12, then the sheriff's office may not withhold this information under section 552.117(a)(2). The sheriff's office may also not withhold the marked cellular telephones number under section 552.117(a)(2) if the cellular telephone service was provided to the employees at issue at public expense.

Nevertheless, if the employees are no longer licensed peace officers, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept

³"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the former employees are no longer currently licensed peace officers as defined by article 2.12 and they timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the information at issue under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the cellular telephone numbers marked under section 552.117(a)(1) if the cellular telephone service was not provided to the employees at issue at public expense. Conversely, to the extent the employees are no longer currently licensed as peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the sheriff's office may not withhold the information at issue under section 552.117(a)(1).⁴ The sheriff's office may also not withhold the marked cellular telephone numbers section 552.117(a)(1) if the cellular telephone service was provided to the employees at issue at public expense

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). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL

⁴To the extent the employees' social security numbers are not excepted from disclosure under section 552.117(a)(1), we note 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).

3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.⁵ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. 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). We agree the sheriff's office must withhold the dates of birth of public citizens in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the dates of birth of public citizens and the information we have marked in the remaining documents under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note some the information marked under common-law privacy pertains to an individual whose identity may be protected under section 552.117(a)(1) of the Government Code. In that instance, the information we marked relates to an individual who has been de-identified and whose privacy interest is, thus, protected, and the department may not withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

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. We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. The sheriff's office must withhold the cellular telephone number we have marked under section 552.1175 if the individual at issue is a licensed peace officer, he elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not provided to him at public expense. However, the sheriff's office may not withhold this information under section 552.1175 if the individual is not a currently licensed peace officer,

⁵Section 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).

he does not elect to restrict access to this information in accordance with section 552.1175(b), or the cellular telephone service was provided to him 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 sheriff'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* Gov't Code § 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). The sheriff's office does 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, we agree the sheriff's office must withhold the e-mail addresses of members of the public in the remaining information under section 552.137 of the Government Code.

Section 552.139 of the Government Code provides, in relevant part, the following:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security, to restricted information under 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Id. § 552.139(a), (b)(1)-(2). Upon review, we find the sheriff's office has failed to demonstrate any of the remaining information relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). *See id.* § 2059.055 (defining confidential network information for purposes of section 2059.055). Further, we find the sheriff's office has failed to demonstrate this information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Therefore, the sheriff's office may not withhold any of the remaining information under section 552.139.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. Upon review, we find the sheriff's office has not demonstrated release of any of the remaining information would subject the member of the sheriff's office to a substantial threat of physical harm. Therefore, we conclude the sheriff's office may not withhold any of the remaining information of under section 552.152.

To conclude, the sheriff's office may withhold the information we have marked or indicated under sections 552.108(b)(1) and 552.111 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the employees at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure; however, if the employees are no longer currently licensed peace officers as defined by article 2.12 and they timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the information at issue under section 552.117(a)(1) of the Government Code. Nevertheless, the sheriff's office may only withhold the cellular telephone number marked under section 552.117 of the Government Code if the cellular telephone service was not provided to the employee at issue at public expense. The sheriff's office must withhold the dates of birth of public citizens and the information we have marked in the remaining documents under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information we marked under common-law privacy relates to an individual who has been de-identified pursuant to section 552.117 of the Government Code, the department may not withhold this information under section 552.101 of the Government Code on that ground. The sheriff's office must withhold the cellular telephone number we have marked under section 552.1175 if the individual at issue is a licensed peace officer, he elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, and the cellular telephone service was not provided to him at public expense. The sheriff's office must withhold the information we have marked under

section 552.130 of the Government Code. The sheriff's office must withhold the e-mail addresses of members of the public in the remaining information under section 552.137 of the Government Code. The sheriff's office must 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/bhf

Ref: ID# 618716

Enc. Submitted documents

c: Requestor
(w/o enclosures)