



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2016

Ms. Carah-Beth Bass
Counsel for the Victoria County Sheriff's Office
Allison, Bass & Magee, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2016-27706

Dear Ms. Bass:

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# 637744.

The Victoria County Sheriff's Office (the "sheriff's office"), which you represent, received a request for a named former deputy's employee file.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions 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*

¹We note the requestor limited the request to exclude any information pertaining to ongoing and open criminal cases.

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 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. Upon review, we find the sheriff's office must withhold the date of birth you marked under section 552.102(a) of the Government Code.² However, we find none of the remaining information is subject to section 552.102(a) of the Government Code, and the sheriff's office may not withhold any of the remaining information on that basis.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. As noted above, 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.*, 540 S.W.2d at 685. 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 concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). Additionally, the work conduct, job performance, and salary information of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow), 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not private). In Open Records Decision No. 470 (1987), this office determined that, although the fact that a public employee is sick is public, specific information about illnesses is excepted from disclosure under common-law privacy. ORD 470 at 4; see ORD 455 at 9 (information regarding applicants' illnesses or operations and physical handicaps is intimate personal information). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 in conjunction with common-law privacy.³ However, we find you have not demonstrated any of the remaining information you marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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. In this instance, it is unclear whether the former employee whose information is at issue is currently a licensed peace officer as defined by article 2.12. Accordingly, to the extent the former employee is currently a licensed peace officer as defined by article 2.12, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the former employee at issue is not currently a licensed peace officer as defined by article 2.12, the information we marked may not be withheld under section 552.117(a)(2) of the Government Code. We find the remaining information you have marked is not subject to section 552.117(a)(2), and the sheriff's office may not withhold it on that basis.

If the former employee is not a currently licensed peace officer, section 552.117(a)(1) of the Government Code may apply to the information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 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 only be withheld under section 552.117(a)(1) on behalf of a current or former official or 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. If the individual made a timely election under section 552.024, the sheriff's

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

office must withhold the information we marked under section 552.117(a)(1). If the individual did not make a timely election under section 552.024, this information may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.⁴ We find none of the remaining information you marked is subject to section 552.130 of the Government Code, and the sheriff's office may not withhold it on that basis.

Section 552.136(b) of the Government Code states "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find none of the remaining information is subject to section 552.136 of the Government Code, and the sheriff's office may not withhold it on that basis.

To the extent the submitted social security number is not excepted from disclosure under section 552.117(a)(1) of the Government Code, you claim it is excepted under section 552.147 of the Government Code. Section 552.147 provides "the social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). Accordingly, to the extent the submitted social security number is not excepted from disclosure under section 552.117(a)(1) of the Government Code, the sheriff's office may withhold the submitted social security number under section 552.147(a) of the Government Code.

In summary, the sheriff's office must withhold the date of birth you marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the former employee is currently a licensed peace officer as defined by article 2.12, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the former employee at issue is not currently a licensed peace officer as defined by article 2.12, and if the individual made a timely election under section 552.024, the sheriff's office must withhold the information we marked under section 552.117(a)(1). The sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. To the extent the submitted social security number is not excepted from disclosure under section 552.117(a)(1) of the Government Code, the sheriff's office may withhold the

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

submitted social security number under section 552.147(a) of the Government Code. The sheriff's office 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, 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/bw

Ref: ID# 637744

Enc. Submitted documents

c: Requestor
(w/o enclosures)