



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 10, 2020

Ms. Amy Bass-Domel
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2020-03904

Dear Ms. Bass-Domel:

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# 810951.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for certain information pertaining to a named sheriff's office employee. You state the sheriff's office is withholding certain dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, 552.136, 552.137, 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). The Texas Supreme Court 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). Accordingly, the sheriff's office must withhold the employee's date of birth you marked under section 552.102(a) of the Government Code.

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. This section encompasses the doctrine of common-law privacy, which

¹ Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

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 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 carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transactions between individual and governmental body protected under common-law privacy). Upon review, we find some of the remaining information 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 of the Government Code in conjunction with common-law privacy.²

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. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). The remaining information contains information that may be subject to section 552.1175. Thus, to the extent the information you marked under section 552.1175 relates to licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold it under section 552.1175 of the Government Code.³ However, if the individuals whose information is at issue are not currently licensed peace officers or do not elect to restrict access to the information in accordance with section 552.1175(b), then the information you marked may not be withheld under section 552.1175 of the Government Code.

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. *Id.* § 552.117(a)(2). Section 552.117 also

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³ In that instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 further note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. It is unclear whether the sheriff's office employees at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the information we marked pertains to employees that are currently licensed peace officers as defined by article 2.12, the sheriff's office must withhold such information under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service was not paid for by a governmental body.⁴ The remaining information at issue does not consist of a home address or telephone number, social security number, emergency contact information, or family member information pertaining to a sheriff's office employee and may not be withheld under section 552.117(a)(2).

If the employees are not currently 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) of the Government Code 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 or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). As noted above section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Additionally, as previously noted, section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. 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 or official 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 or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the cellular telephone numbers at issue may be withheld only if a governmental body does not pay for the cellular telephone service.⁵ Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the sheriff's office may not withhold the information at issue under section 552.117(a)(1). The remaining information at issue does not consist of a home address or telephone number, social security number, emergency contact

⁴ In that instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁵ In that instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information, or family member information pertaining to a sheriff's office employee and may not be withheld under section 552.117(a)(1).

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[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 government body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the sheriff's office must withhold the information you marked under section 552.136 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). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or a personal e-mail address belonging to a sheriff's office employee or official used to conduct official government business. *See id.* § 552.137(c); *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of "members of the public" for purposes of Gov't Code § 552.137(a)). Accordingly, except for the e-mail address we marked for release, the sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. However, we find you have failed to demonstrate the e-mail address we marked for release is excepted under section 552.137 of the Government Code, and it may not be withheld on that basis.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *See* Gov't Code § 552.147. Accordingly, the sheriff's office may withhold the social security numbers you marked under section 552.147 of the Government Code.

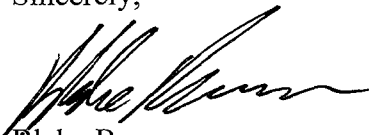
In summary, the sheriff's office must withhold the employee's date of birth you marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information you marked under section 552.1175 relates to licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold it under section 552.1175 of the Government Code. To the extent the information

we marked pertains to employees that are currently licensed peace officers as defined by article 2.12, the sheriff's office must withhold such information under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service was not paid for by a governmental body. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the cellular telephone numbers at issue may be withheld only if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. The sheriff's office must withhold the information you marked under section 552.136 of the Government Code. With the exception of the e-mail address we marked for release, the sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The sheriff's office may withhold the social security numbers you marked under section 552.147 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 810951

Enc. Submitted documents

c: Requestor
(w/o enclosures)