



January 8, 2015

Chief Deputy C.R. Servise
Burnet County Sheriff's Office
P.O. Box 1249
Burnet, Texas 78611

OR2015-00370

Dear Chief Deputy Servise:

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# 549282 (OR# 2739).

The Burnet County Sheriff's Office (the "sheriff's office") received a request for the complete personnel file of a named former officer. You state the sheriff's office will provide some of the requested information to the requestor with redactions pursuant to Open Records Decision No. 684 (2009).¹ You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code.² We have considered your arguments and reviewed the submitted information.

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

²Although you raise section 552.101 of the Government Code in conjunction with sections 552.024, 552.117, and 552.130 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions or sections found in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

You state the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers.³ In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to a peace officer for identification in the commissioner's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the TCOLE numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE numbers in the submitted information are not subject to the Act and need not be released to the requestor.

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. Section 552.101 encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code ch. 411, subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we agree the information you have marked consists of CHRI the sheriff's office must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

³The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 of the Government Code provides, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the submitted fingerprints. Therefore, the sheriff’s office must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses information made confidential by section 1701.306 of the Occupations Code. Section 1701.306 makes confidential L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the TCOLE. Former section 1701.306 provides, in part:

(a) The [TCOLE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

- (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
- (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Act of May 17, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2219 (current version at Occ. Code §§ 1701.306(a), (b)). The submitted L-2 and L-3 forms were created prior to September 1, 2011. Although section 1701.306 of the Occupations Code was amended in 2011 by the 82nd Legislature, L-2 and L-3 declaration forms created prior to September 1, 2011, are subject to the former version of section 1701.306, which was continued in effect for that purpose. *See* Act of May 30, 2011, 82nd Leg., R.S., ch. 1224, § 7. Upon review, we agree the sheriff’s office must withhold the L-2 and L-3

forms you have marked under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code.⁴

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides:

(a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Id. § 1701.454. You seek to withhold, in the remaining information, two F-5 Separation of Licensee forms (the “jailer F-5 form” and the “peace officer F-5 form”) that were submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code, as well as two L-1 Report of Appointment/License Application forms. The jailer F-5 form reflects the named former officer did not resign, and was not terminated, from his jailer position due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff’s office must withhold the jailer F-5 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.⁵ However, the submitted information, including the peace officer F-5 form, indicates the named former officer resigned from his peace officer position due to substantiated violations of the law other than traffic offenses. Thus, the sheriff’s office may not withhold the peace officer F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. Furthermore, we note section 1701.454 is applicable only to information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. *See id.* § 1701.454(a). The only report or statement found in subchapter J is form F-5. *See id.* § 1701.452. Therefore, we conclude the sheriff’s office may not withhold the submitted L-1 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. *See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).*

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

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We note some of the remaining information is protected by common-law privacy. 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked in 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 have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

We note a portion of the remaining information is subject to section 552.102(a) of the Government Code, which excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy [.]"⁶ 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). The sheriff's office must withhold the information we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and 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. Gov't Code § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024

⁶The 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).

prior to the date on which the request for this information was made. You have submitted a copy of the election form completed by the named former officer whose information is at issue showing the former officer elected to keep his home address, home telephone number, social security number, and information that reveals whether or not he has family members confidential prior to the date of this request. Accordingly, the sheriff's office must withhold these types of information you have marked, and we have marked, under section 552.117(a)(1) of the Government Code; however, the sheriff's office may not withhold the marked cellular telephone number if the cellular telephone service is paid for by a governmental body.⁷

You have also marked a personal e-mail address to be withheld under section 552.117(a)(1). However, the e-mail address is not the named former officer's home address, home telephone number, social security number, or information that reveals whether or not he has family members. Therefore, the sheriff's office may not withhold the e-mail address you have marked under section 552.117(a)(1) of the Government Code.

We note section 552.1175 of the Government Code may be applicable to some of the remaining information. Section 552.1175 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. Section 552.1175 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. Section 552.1175 applies to federal judges and state judges as defined by section 13.0021 of the Election Code. Gov't Code § 552.1175(a)(10). The remaining information contains a cellular telephone number of an individual who may be subject to section 552.1175. Thus, the sheriff's office must withhold the cellular telephone number, which we have marked, under section 552.1175 of the Government Code if it pertains to an individual who is subject to section 552.1175(a), the individual elects to restrict access to this information in accordance with section 552.1175(b), and a governmental body does not pay for the cellular telephone service. However, if the individual is not subject to section 552.1175(a), does not elect to restrict access to this information in accordance with section 552.1175(b), or a governmental body pays for the cellular telephone service, then the sheriff's office may not withhold this information under section 552.1175 of the Government Code.

You have marked the information you seek to withhold under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public

⁷As our ruling is dispositive for this information, we need not address your remaining argument against disclosure for a portion of this information.

release.⁸ *Id.* § 552.130(a). We note, however, some of the information you have marked does not consist of information that is subject to section 552.130. As such, this information, which we have marked for release, may not be withheld on that basis. Therefore, with the exception of the information we have marked for release, the sheriff's office must withhold the motor vehicle record information you have marked, as well as the additional information we have marked for withholding, under section 552.130 of the Government Code.⁹

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 id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the sheriff's office must withhold the personal e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the TCOLE numbers are not subject to the Act and need not be released to the requestor. The sheriff's office must withhold under section 552.101 of the Government Code (1) the CHRI you have marked in conjunction with section 411.083 of the Government Code and federal law; (2) the fingerprints you have marked in conjunction with section 560.003 of the Government Code; (3) the L-2 and L-3 forms you have marked in conjunction with former section 1701.306 of the Occupations Code; (4) the jailer F-5 form we have marked in conjunction with section 1701.454 of the Occupations Code; and (5) the information we have marked in conjunction with common-law privacy. The sheriff's office must also withhold (1) the information we have marked under section 552.102(a) of the Government Code; (2) the marked home addresses, home telephone numbers, personal cellular telephone number, if the cellular telephone service is not paid for by a governmental body, social security number, and information that reveals whether or not the named former officer has family members under section 552.117(a)(1) of the Government Code; (3) the marked cellular telephone number under section 552.1175 of the Government Code if it pertains to an individual who is subject to section 552.1175(a), the individual elects to restrict access to this information in accordance with section 552.1175(b), and a governmental body does not pay for the cellular telephone service; (4) the marked motor

⁸You state you believe some of the information you have marked can be withheld under the previous determination issued in Open Records Decision No. 684. However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in section 552.130(a) of the Government Code, without the necessity of seeking a decision from the attorney general. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See Gov't Code* § 552.130(d), (e). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to section 552.130(a) only in accordance with section 552.130, not Open Records Decision No. 684.

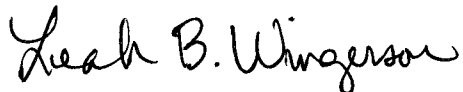
⁹As our ruling is dispositive for this information, we need not address your remaining argument against disclosure for a portion of this information.

vehicle record information, with the exception of the information we have marked for release, under section 552.130 of the Government Code; and (5) the e-mail address you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 549282

Enc. Submitted documents

c: Requestor
(w/o enclosures)