



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2015

Ms. Erin D. Thorn
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 East Cano Street
Edinburg, Texas 78539

OR2015-26408

Dear Ms. Thorn:

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# 590821 (HCSO No. 2015-0112-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named individual. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number.³ Section 552.002(a) of the

¹Although you also raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the sheriff's office holds in an employment capacity.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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.

Government Code defines “public information” as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (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.

Gov’t Code § 552.002(a). 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 peace officers 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 officer’s TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor.⁴

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 of the Government Code encompasses information made confidential by 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). There is no indication the requestor has a right of access to the fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure).

⁴As we are able to make this determination, we need not address your argument against the disclosure of this information.

Accordingly, the sheriff's office must withhold the fingerprints we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses former section 1701.306 of the Occupations Code, which provides:

(a) [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 [TCOLE]. 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 find the sheriff's office must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we have marked under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code.³

Section 552.101 of the Government Code encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") 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,

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

detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 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 §§ 411.081-.1409. 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 or subchapter E-1 of the Government Code. *See* Gov’t Code §411.083(a). Sections 411.083(h)(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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Accordingly, the sheriff’s office must withhold the CHRI we have marked in Exhibit E under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. However, none of the remaining information is CHRI for the purposes of chapter 411. Thus, the sheriff’s office may not withhold the remaining information on this basis.

Section 552.152 of the Government Code provides:

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.

Gov’t Code § 552.152.⁶ You inform us Exhibit F consists of the identifying information of police officers. You further state release of Exhibit F would permit private citizens to determine the identities of specific officers involved in a joint state and federal task force on border security, leading to potential retribution from cartels or other criminals. Based on your representations and our review, we find you have demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the sheriff’s office must withhold identifying information of the officers within Exhibit F, which we have marked, under section 552.152 of the Government Code.⁷

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

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).

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

personal privacy.” *Id.* § 552.102(a). The Texas Supreme Court has 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. However, none of the remaining information is subject to section 552.102(a) of the Government Code and it may not be withheld on that basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2). Thus, the sheriff’s office must withhold the information we marked under section 552.117(a)(2) of the Government Code. However, no portion of the remaining information consists of information subject to section 552.117(a)(2), and it may not be withheld on that basis.

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 id.* § 552.130. Accordingly, the sheriff’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

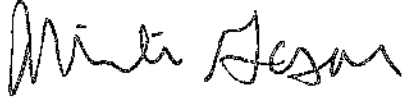
In summary, the TCOLE number is not subject to the Act and need not be released. The sheriff’s office must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code; (3) the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code; (4) the identifying information of the officers we marked within Exhibit F under section 552.152 of the Government Code; (5) the information we have marked under section 552.102(a) of the Government Code; (6) the information we have marked under section 552.117(a)(2) of the Government Code; and (7) the motor vehicle record information we have marked under section 552.130 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,

A handwritten signature in black ink, appearing to read "Mili Gosar". The signature is fluid and cursive, with the first name "Mili" and last name "Gosar" clearly distinguishable.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Rcf: ID# 590821

Enc. Submitted documents

c: Requestor
(w/o enclosures)