



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 1, 2016

Ms. Sarah Stallberg  
Assistant County Attorney  
County of Montgomery  
501 North Thompson, Suite 300  
Conroe, Texas 77301

OR2016-02355

Dear Ms. Stallberg:

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# 596487 (ORR File 15PIA710).

The Montgomery County Sheriff's Office (the "sheriff's office") received a request for seven categories of information pertaining to a named former employee. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the 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 TCOLE'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.<sup>1</sup>

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

(a) the [TCOLE] may not issue a license to a person 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 blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The

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<sup>1</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

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.

Occ. Code § 1701.306(a)-(b). Therefore, the sheriff's office must withhold the submitted L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>2</sup>

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 as follows:

(a) All information submitted to the [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 assert the submitted F-5 report is subject to section 1701.454. We understand the officer at issue neither resigned nor was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold the submitted F-5 report under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by the Texas Department of Public Safety ("DPS") concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides, in part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained

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<sup>2</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a)-(b). Upon review, we find you have failed to demonstrate any of the remaining information is subject to section 411.92. Thus, 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 doctrine of common-law privacy, which protects information that (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). 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 that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). However, this office has noted the public has a legitimate interest in information relating to those who are involved in law enforcement. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of law enforcement employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). Upon review, we find some of the information at issue 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. However, we find the sheriff's office failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code on this basis.

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[.]”<sup>3</sup> Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) exempts 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). Upon review, we find the sheriff’s office must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code exempts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov’t Code § 552.117(a)(2). We note 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* 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). Upon review, we find the sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the sheriff’s office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body.

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 a personal identification document issued by an agency of this state or another state or country is exempted from public release. Gov’t Code § 552.130(a). Upon review, we find 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 exempts 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.* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by subsection (c). Therefore, the sheriff’s office must withhold the personal e-mail addresses at issue under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the TCOLE identification number is not subject to the Act and need not be released. The sheriff’s office must withhold the L-2 and L-3 forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The sheriff’s office must withhold the F-5 report under section 552.101 of the Government

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

Code in conjunction with section 1701.454 of the Occupations Code. 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. The sheriff's office must withhold the date of birth we have marked under section 552.102(a) 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; however, the sheriff's office may only withhold the cellular telephone number if the cellular telephone service is not paid for by a governmental body. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must withhold e-mail addresses at issue under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. The remaining information must be released.

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](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 596487

Enc. Submitted documents

c: Requestor  
(w/o enclosures)