



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2016

Ms. Janna Lindig
County Attorney
Bandera County
P.O. Box 656
Bandera, Texas 78003

OR2016-05992

Dear Ms. Lindig:

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# 601534.

The Bandera County Attorney's Office (the "county attorney's office") received a request for personnel files of three named deputies and all case reports, specified affidavits, video, audio, or documents pertaining to a specified arrest. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of a representative sample of information.¹

Initially, we note some of the requested information was the subject of a previous ruling from this office, as a result of which this office issued Open Records Letter No. 2016-02400 (2016). In that ruling, we determined, in part, TCOLE identification numbers are not subject to the Act; we also concluded the county attorney's office must withhold a specified video recording and withhold or release specified information relating to a named deputy under sections 552.101, 552.102, 552.117(a)(2), 552.130, 552.136, and 552.137 of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the county attorney's office may continue to rely on Open Records Letter No. 2016-02400 as a previous determination and withhold or release the

¹We 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.

information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments for the submitted information not subject to the previous ruling.

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. We note the submitted information contains peace officers’ Texas Commission on Law Enforcement (“TCOLE”) identification numbers. 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 officers’ TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.

Section 552.101 of the Government Code excepts from public 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 federal tax

return information made confidential by section 6103(a) of title 26 of the United States Code. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as a taxpayer’s “identity, the nature, source, or amount of . . . income.” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the county attorney’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses the Americans with Disabilities Act (the “ADA”). *See* 42 U.S.C. §§ 12101 *et seq.* The ADA provides that a covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination provided that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as confidential medical records. 42 U.S.C. § 12112(d)(3)(B); *see also* 29 C.F.R. § 1630.14(b); Open Records Decision No. 641 (1996). We note the submitted information contains the results of a pre-employment physical conducted upon an employee of the Bandera County Sheriff’s Office. Upon review, we find the county attorney’s office must withhold the information we marked under section 552.101 in conjunction with the ADA.

We understand you to raise section 552.101 of the Government Code in conjunction with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) for some of the requested information. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code

§§ 552.002, .003, .021. We therefore held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the county attorney's office may not withhold any portion of the submitted information on that basis.

Section 552.101 also encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has found, when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." Open Records Decision No. 546 at 1 (1990). This office has also concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we have marked constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by someone under the supervision of a physician. Accordingly, the county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find the county attorney's office has failed to demonstrate any of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by someone under the supervision

of a physician. Therefore, the county attorney's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or 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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, 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 or subchapter E-1. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). We note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. We also note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See id.* § 411.081(b). We further note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the county attorney's office must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. However, the county attorney's office failed to demonstrate any of the remaining information is confidential CHRI. Therefore, the county attorney's office may not withhold any of the remaining information under section 552.101 in conjunction with section 411.083 and federal law.

Section 552.101 also encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the "HSA"), section 418.182 was added to chapter 418 of the Government Code. This provision makes confidential certain information related to terrorism. Section 418.182 provides, in relevant part:

- (a) [I]nformation . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may relate to a governmental body's security concerns does not make the information per se confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We understand you to claim the video recordings you have indicated are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 418.182 of the HSA. You state these video recordings reveal "information regarding the [Bandera County] Sheriff's Office, particularly the lay out of the booking room," which we understand to include the video surveillance system. You further assert release of the information at issue "could pose a threat to the security of the Sheriff's Office." Upon review, we find the information at issue relates to the specifications or location of a security system used to protect public or private property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (finding confidential under section 418.182 of the HSA video recording containing images recorded by security cameras in Texas Capitol hallway because specifications of security system included cameras' capabilities and video recording demonstrated those capabilities through characteristics, quality, and clarity of images recorded). Therefore, the county attorney's office must withhold the indicated video recordings under section 552.101 of the Government Code in conjunction with section 418.182 of the Government Code.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprints we have marked constitute biometric identifiers for purposes of section 560.003 of the Government Code. Accordingly, the county attorney's office must withhold the marked fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code excepts from public 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 made confidential by other statutes, such as chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004,.0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find portions of the submitted information consist of mental health records that are subject to chapter 611 of the Health & Safety Code. Accordingly, the county attorney’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health & Safety Code.

Section 552.101 of the Government Code 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 TCOLE. Former section 1701.306 provides, in part:

(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.

Occ. Code § 1701.306(a), (b). Accordingly, the county attorney's office must withhold the submitted L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code.

Section 552.101 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 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, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects 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 transaction between individual and governmental body protected under common-law privacy). We note, however, the public generally has a legitimate interest in information relating to public employment and public employees. *See* 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 (1987) (public employee's job performance does not generally constitute employee's private affairs), 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). Further, this office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 455 at 9 (1987) (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question"), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). Criminal history information obtained by a law enforcement agency in the process of hiring a peace officer is also a matter of legitimate public interest.

Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.* 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees'

dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.² *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the county attorney's office must withhold the information we marked, and all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the county attorney's office has failed to demonstrate the remaining information it marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the county attorney'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 552.101 of the Government Code also encompasses the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119. Upon review, we find the county attorney's office has not demonstrated how disclosure of the remaining information would create a substantial threat of physical harm to an individual. Therefore, the county attorney's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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[.]" *Id.* § 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, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas 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 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

²Section 552.102(a) 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).

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. Therefore, the county attorney's office must withhold the dates of birth we have indicated under section 552.102(a) of the Government Code.

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. Accordingly, the county attorney's office must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code. However, none of the remaining information is of the type made confidential by section 552.117(a)(2) and thus, the county attorney's office may not withhold any of it on that basis.

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. *Id.* § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Therefore, to the extent the information we have marked or indicated relates to a currently licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the county attorney's office must withhold this information under section 552.1175 of the Government Code. If the individual whose information is at issue is not a currently licensed peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked or indicated information may not be withheld under section 552.1175. Further, none of the remaining information is of the type made confidential under section 552.1175 of the Government Code and thus, the county attorney's office may not withhold any of it 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. Upon review, we find the county attorney's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.³

Section 552.136 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,

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

assembled, or maintained by or for a governmental body is confidential.”⁴ Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the county attorney’s office must withhold the insurance policy number we have 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). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the county attorney’s office must withhold the personal e-mail addresses we have marked and indicated under section 552.137 of the Government Code, unless their owners affirmatively consent to public disclosure.

Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may be disclosed only in accordance with section 552.140 or a court order. *See id.* § 552.140(a)-(b). We note that section 552.140 applies to only the DD-214 form itself or other military discharge records and not references to the form or records. Upon review, we find the county attorney’s office came into possession of the military discharge record we have marked after September 1, 2003. Thus, the county attorney’s office must withhold the military discharge record we have marked under section 552.140 of the Government Code.

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 [required public disclosure] 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. You represent the release of some of the remaining information would subject the officers to a substantial threat of physical harm. However, the county attorney’s office has failed to demonstrate the release of the information at issue would subject the officers to a substantial threat of physical harm. Therefore, the county attorney’s

⁴The 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).

office may not withhold the information at issue under section 552.152 of the Government Code.

In summary, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor. Additionally, the county attorney's office must rely on Open Records Letter No. 2014-02400 as a previous determination and withhold or release the specified information regarding the specified video recording and information relating to a named deputy. The county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The county attorney's office must withhold the information we have marked under section 552.101 in conjunction with the ADA. The county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The county attorney's office must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The county attorney's office must withhold the indicated video recordings under section 552.101 of the Government Code in conjunction with section 418.182 of the HSA. The county attorney's office must withhold the marked fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code. The county attorney's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health & Safety Code. The county attorney's office must withhold the submitted L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code. The county attorney's office must withhold the information we have marked, along with all public citizens' dates of birth in the remaining information, under section 552.101 of the Government Code in conjunction with common-law privacy. The county attorney's office must withhold the employees' dates of birth we have indicated under section 552.102(a) of the Government Code. The county attorney's office must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code. To the extent the information we have marked relates to an individual who is not a currently licensed peace officer, but who elected to restrict access to his information in accordance with section 552.1175(b), the county attorney's office must withhold this information under section 552.1175 of the Government Code. The county attorney's office must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The county attorney's office must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The county attorney's office must withhold the personal e-mail addresses we have marked and indicated under section 552.137 of the Government Code, unless their owners affirmatively consent to public disclosure. The county attorney's office must withhold the military discharge records we have marked under section 552.140 of the Government Code. The county attorney'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/dls

Ref: ID# 601534

Enc. Submitted documents

c: Requestor
(w/o enclosures)