



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2016

Mr. Jonathan L. Almanza
Assistant District Attorney
Criminal District Attorney's Office
100 North Clossner, Room 303
Edinburg, Texas 78539

OR2016-11618

Dear Mr. Almanza:

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# 611093 (HCDA File No. 2016-0028-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named officer. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement ("TCOLE") under subchapter J of chapter 1701 of the Occupations Code.² Section 1701.454 provides as follows:

¹Although you claim section 552.1175 of the Government Code for portions of the submitted information, section 552.117 is the proper exception to raise in this instance as the sheriff's office holds the submitted information in an employment context.

²The 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.

(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.

Occ. Code § 1701.454. Exhibit B consists of information that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue reflects the named officer did not resign or was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold Exhibit B under section 552.101 in conjunction with section 1701.454 of the Occupations Code.³

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See 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 F, or subchapter E-1 of the Government Code. *See* Gov't Code § 411.083(a). 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find a portion of Exhibit C, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the sheriff's office must

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

withhold the marked information in Exhibit C under section 552.101 in conjunction with section 411.083 of the Government Code.⁴ However, we find you have not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

We note portions of the remaining information are subject to section 552.102 of the Government Code.⁵ 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). 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 we have marked in Exhibit C under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 sections 552.024 and 552.1175 of the Government Code. *See* 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. You state the officer at issue is currently a licensed peace officer. Accordingly, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code. 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 portions of the submitted information consist of motor vehicle record information. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the sheriff's office must withhold: (1) Exhibit B under section 552.101 in conjunction with section 1701.454 of the Occupations Code, (2) the marked information in Exhibit C under section 552.101 in conjunction with section 411.083 of the Government Code, (3) the employee's date of birth we have marked in Exhibit C under section 552.102(a) of the Government Code, (4) the information we marked under section 552.117(a)(2) of the Government Code, and (5) the motor vehicle record information we have marked under section 552.130 of the Government Code. 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, 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 611093

Enc. Submitted documents

c: Requestor
(w/o enclosures)