



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 22, 2016

Ms. Jennifer Burnett  
Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701-2901

OR2016-25964

Dear Ms. Burnett:

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# 635342 (OGC# 171718)

The University of Texas System (the "system") received a request for nine categories of information pertaining to the employment of a named individual with the system's police force. You state you have no information responsive to a portion of the request.<sup>1</sup> You state the system has released some information. You state you are withholding information under sections 552.1175, 552.130, and 552.147 of the Government Code and Open Records Decision No. 684 (2009).<sup>2</sup> 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

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b) the Government Code, without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See* Gov't Code § 552.1175(f). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *Id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of seeking a decision from this office.

under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. 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. 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.

Next, we note the requestor excluded from the request the named individual's social security number, personal banking information, personal phone numbers, and personal addresses. Accordingly, this type of information is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the system is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.*

§ 552.101. This section encompasses information protected by other statutes, such as section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review, we find the information you marked constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

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. This office has found personal financial information not relating to a financial

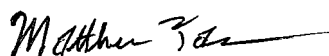
transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, the public interest in a public employee's prior salary justifies disclosure, as such information bears on the employee's past employment record and suitability for the employment position in question. *See* Open Records Decision No. 455 at 9 (1987). Upon review, we find the system has failed to demonstrate the information you have marked is highly intimate or embarrassing and of no legitimate public interest; thus, the marked information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor. The system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The system must release the remaining responsive 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](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bhf

Ref: ID# 635352

Enc. Submitted documents

c: Requestor  
(w/o enclosures)