



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 4, 2017

Mr. Ben Kirk  
County Sheriff  
County of Falls  
P.O. Box 401  
Marlin, Texas 76661

OR2017-00218

Dear Sheriff Kirk:

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# 640273.

The Falls County Sheriff's Office (the "sheriff's office") received a request for 19 categories of information related to a named individual. You state you will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.140 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excluded from the request personal identifying information, including home addresses, dates of birth, driver's license numbers, license plate information, and other identifying information that is excluded by statute. Accordingly, these types of information you have marked, as well as the additional information we have marked, are not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the sheriff's office is not required to release non-responsive information in response to this request.<sup>2</sup>

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<sup>1</sup>Although you do not raise section 552.140 of the Government Code in your brief, we understand you to assert this exception based on your arguments.

<sup>2</sup>As our ruling is dispositive for the information at issue, we need not address the arguments against its disclosure.

Next, we note the submitted information contains a Texas Commission on Law Enforcement (“commission”) identification number of a peace officer.<sup>3</sup> 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 commission identification number is a unique computer-generated number assigned to peace officers for identification in the commission’s electronic database, and may be used as an access device number on the commission website. Accordingly, we find the commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted commission identification number is not subject to the Act and the sheriff’s office is not required to release it.

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 section 1701.454 of the Occupations Code, which

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<sup>3</sup>The 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.

governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

- (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], 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 commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information contains an F-5 Separation of Licensee form that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The submitted F-5 form does not reflect the named former officer to whom this form applies 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 form 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 chapter 560 of the Government Code, which provides a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The sheriff's office does not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, the remaining information is not confidential under section 560.003, and the sheriff's office may not withhold it under section 552.101 on that ground.

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.<sup>4</sup> *Id.* § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988). Thus,

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<sup>4</sup>The 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).

to the extent the information we have marked relates to licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services. If the individuals whose information is at issue are not currently licensed peace officers or do not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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 Gov't Code § 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.

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 only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id. § 552.140(a), (b).* It appears the sheriff's office obtained the submitted DD-214 form after September 1, 2003. Therefore, the sheriff's office must withhold the submitted DD-214 form under section 552.140 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 id. § 552.137(a)-(c).* Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c), and the sheriff's office does not inform us a member of the public has affirmatively consented to its release. Therefore, the sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code.

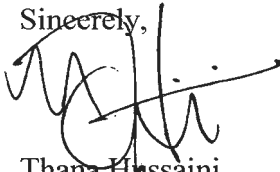
In summary, the submitted commission identification number is not subject to the Act and the sheriff's office is not required to release it. The sheriff's office must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff's office must withhold the fingerprint information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. To the extent the information we have marked relates to licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), it must be withheld from

disclosure under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services. 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 the submitted DD-214 form under section 552.140 of the Government Code. The sheriff's office must withhold the e-mail address we have marked under section 552.137 of the Government Code. The remaining responsive 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# 640273

Enc. Submitted documents

c: Requestor  
(w/o enclosures)