



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2017

Mr. Buster Nixon
Mason County Sheriff
Mason County Sheriff's Office
210 Westmoreland Street
Mason, Texas 76856

OR2017-01075

Dear Mr. Nixon:

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# 641771.

The Mason County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named sheriff's office employee. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2010-08596 (2010). In that ruling, we determined the sheriff's office must (1) withhold the submitted CR-3 accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (2) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (3) withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) withhold the information we marked under section 552.117(a)(2) of the Government Code; (5) withhold the information we marked under section 552.1175 of the Government Code, to the extent the information we marked pertains to a currently licensed peace officer who elected to restrict access to this information in accordance with section 552.1175(b) of the Government Code;

(6) withhold the information we marked under section 552.130 of the Government Code; and (7) release the remaining requested information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed with regard to items (2) through (7) above. Thus, the sheriff's office must continue to rely on Open Records Letter No. 2010-08596 as a previous determination for items (2) through (7) and withhold or release the 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 note the law has changed with regard to the CR-3 accident report and the sheriff's office may not rely on Open Records Letter No. 2010-08596 as a previous determination for that information. Thus, we will address your argument against disclosure for the CR-3 report. We will also address your arguments against disclosure for the submitted information that is not subject to the prior ruling.

Next, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("commission") identification number.¹ Section 552.002(a) 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 by a governmental body; for a governmental body and the governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or 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. ORD 581 at 5. We understand an officer's commission 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 commission's website. Accordingly, we find the officer's commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the commission

¹The 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.

identification number is not subject to the Act and the sheriff's office is not required to release it to the requestor.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 of the Government Code encompasses the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides:

- (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.

Id. § 159.002. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find Exhibit 1 consists of medical records subject to the MPA. The sheriff's office must withhold Exhibit 1 under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code.³

Section 552.101 of the Government Code also encompasses information protected by section 1701.454 of the Occupations Code, which 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 Chapter 552, Government

²As our ruling is dispositive, we need not address the sheriff's office's remaining argument against disclosure for the information at issue.

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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 commission member or other person may not release information submitted under this subchapter.

Id. § 1701.454. Exhibit 4 includes information that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the sheriff's office informs us the named officer did not resign or have his employment 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 information we have marked in Exhibit 4 under section 552.101 in conjunction with section 1701.454 of the Occupations Code.⁴

Section 552.101 of the Government Code also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). Accordingly, the accident report included in Exhibit 6, which we have marked, is confidential under section 550.065(b) of the Transportation Code, and the sheriff's office must withhold it under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses 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 that 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 that the Department of Public Safety ("DPS") maintains, except that 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

⁴As our ruling is dispositive, we need not address the sheriff's office's remaining argument against disclosure for the information at issue.

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, the information we marked in Exhibit 7 consists of CHRI for purposes of chapter 411 of the Government Code. Thus, the sheriff's office must withhold the information we marked in Exhibit 7 under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.⁵ However, upon review, we find the sheriff's office has not demonstrated the remaining information constitutes confidential CHRI for the purposes of chapter 411. As such, the sheriff's office may not withhold the remaining information under section 552.101 of the Government Code on that 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." Gov't Code § 552.102(a). We understand the sheriff's office 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. Section 552.101 of the Government Code encompasses common-law privacy, which protects information if it (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). 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 has 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 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. Accordingly, the sheriff's office must withhold the employee's date of birth we marked under section 552.102(a) of the Government Code. However, we find none of the remaining information is subject to

⁵As our ruling is dispositive, we need not address the sheriff's office's remaining arguments against disclosure for the information at issue.

section 552.102(a), and the sheriff's office may not withhold any of the remaining information on that basis.

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. 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). Accordingly, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the marked telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.⁶ We find none of the remaining information is subject to section 552.117(a)(2) of the Government Code, and the sheriff's office may not withhold 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* Gov't Code § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, we find none of the remaining information is subject to section 552.130, and the sheriff's office may not withhold the remaining information on that basis.

In summary, the sheriff's office must continue to rely on Open Records Letter No. 2010-08596 as a previous determination with regard to items (2) through (7) and withhold or release the information at issue in accordance with that ruling. The commission identification number is not subject to the Act and the sheriff's office is not required to release it to the requestor. The sheriff's office must withhold Exhibit 1 under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code. The sheriff's office must withhold the information we have marked in Exhibit 4 under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The accident report included in Exhibit 6, which we have marked, is confidential under section 550.065(b) of the Transportation Code, and the sheriff's office must withhold it under section 552.101 of the Government Code. The sheriff's office must withhold the information we marked in Exhibit 7 under section 552.101

⁶As our ruling is dispositive, we need not address the sheriff's office's remaining arguments against disclosure for the information at issue.

of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The sheriff's office must withhold the employee's date of birth we marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the marked telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the motor vehicle record information we 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 641771

Enc. Submitted documents

c: Requestor
(w/o enclosures)