



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2017

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2017-04792

Dear Ms. Lentz:

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# 648147.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for the personnel file of the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.122, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from 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 protected by other statutes, such as 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. Section 1701.454 provides as follows:

- (a) All information submitted to [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. The submitted information includes F-5 Separation of Licensee forms that were submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the F-5 forms indicate the officer at issue did not resign and 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 the submitted F-5 forms you have marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which pertains to L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person 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 blood test or other medical test.

(b) An agency hiring a person for whom a license 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.

Id. § 1701.306(a)-(b). Upon review, we find the sheriff's office must withhold the L-3 form you have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information

collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas 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. 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). Thus, 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. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find, with the exception of the driving record information we marked for release, the information you have marked consists of CHRI the sheriff’s office must withhold under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. *Id.* 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.¹ *Texas 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. Accordingly, the sheriff’s office must generally withhold the public citizens’ dates of birth you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we note the requestor may be acting as the authorized representative of an individual whose information is at issue, and, as such, the requestor may have a right of

¹Section 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).

access to this individual's information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the requestor is acting as an authorized representative, he has a right of access to the information at issue pursuant to section 552.023(a), and it may not be withheld from him under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor is not acting as an authorized representative, then the sheriff's office must withhold all public citizens' dates of birth in the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8. Upon review, we find the submitted answer sheet does not reveal the questions themselves. Accordingly, the sheriff's office may not withhold the answer sheet under section 552.122 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* Gov't Code § 552.130. We note section 552.130 protects privacy interests. As noted above, the requestor may be an authorized representative, and may have a right of access to information that would otherwise be confidential. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, if the requestor is acting as an authorized representative, then the sheriff's office may not withhold the motor vehicle record information you have marked from him under section 552.130. If the requestor is not acting as an authorized representative, then the sheriff's office must withhold this information under section 552.130 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). Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Upon review, we find the sheriff's office must generally withhold the e-mail addresses you have marked under section 552.137 of the Government Code,

unless their owners affirmatively consent to their public disclosure. We note, however, the requestor may be acting as the authorized representative of an individual whose e-mail address is at issue. Therefore, the requestor may have a right of access to this e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). Accordingly, if the requestor is an authorized representative, then the requestor has a right of access to the e-mail address at issue, and that information may not be withheld from the requestor under section 552.137 of the Government Code. If the requestor is not an authorized representative, then the sheriff's office must withhold the e-mail address at issue under section 552.137 of the Government Code.

In summary, the sheriff's office must withhold the submitted F-5 forms you have marked 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 L-3 form you have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. With the exception of the information we marked for release, the sheriff's office must withhold the information you have marked under section 552.101 in conjunction with section 411.083 of the Government Code. If the requestor is not acting as an authorized representative, then the sheriff's office must withhold the date of birth at issue under section 552.101 of the Government Code in conjunction with common-law privacy. If the requestor is acting as an authorized representative, then, with the exception of the date of birth at issue, the department must withhold all public citizens' dates of birth under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as an authorized representative, then the sheriff's office must withhold the information you have marked under section 552.130 of the Government Code. The sheriff's office must generally withhold the e-mail addresses you have marked, unless their owners affirmatively consent to their release; however, the sheriff's office may not withhold the e-mail address if the requestor has a right of access to the e-mail address under section 552.137(b) of the Government Code. The remaining information must be released.²

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/>

²We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023(b); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the sheriff's office receives another request for this information from a different requestor, then the sheriff's office must again seek a decision from this office.

[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,

A handwritten signature in cursive script that reads "Erin Groff".

Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 648147

Enc. Submitted documents

c: Requestor
(w/o enclosures)