



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 9, 2017

Ms. Jacqueline E. Hojem  
Public Information Coordinator  
Metropolitan Transit Authority  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2017-04998

Dear Ms. Hojem:

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# 649372 (ORR# 2017-0129).

The Metropolitan Transit Authority (the "authority") received a request for the requestor's personnel file. You state the authority has released some of the requested information. You claim some of the submitted information does not consist of public information subject to the Act. You also claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you argue the submitted information contains a peace officer's Texas Commission on Law Enforcement ("commission") identification number that is not subject to the Act.<sup>1</sup> 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;

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<sup>1</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.

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 identification number is not subject to the Act and the authority is not required to release it to the requestor.

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 former section 1701.306 of the Occupations Code, which provides:

(a) [The commission] may not issue a license to a person as an officer or county jailer 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 physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer 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 [the commission]. A declaration is not public information.

Act of May 17, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2219 (current version at Occ. Code § 1701.306(a), (b)). The submitted L-2A, L-3A, and L-3p declaration forms were created prior to September 1, 2011. Although section 1701.306 of the Occupations Code was amended in 2011 by the 82nd Legislature, L-2A, L-3A, and L-3p declaration forms created prior to September 1, 2011, are subject to the former version of

section 1701.306, which was continued in effect for that purpose. *See* Act of May 30, 2011, 82nd Leg., R.S., ch. 1224, § 7. Upon review, we find the authority must withhold the submitted L-2A, L-3A, and L-3p declaration forms created prior to September 1, 2011, under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses former section 1701.454 of the Occupations Code. The remaining information includes an F-5 form created prior to the effective date of the amendment of section 1701.454 by the Seventy-ninth Legislature. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4094, 4096. Thus, the F-5 form at issue is governed by the previous version of section 1701.454. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.<sup>2</sup> Former section 1701.454 provides as follows:

(a) A report or statement 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 subsection, a [the commission] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the [the commission] employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by [the commission] that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

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<sup>2</sup>Section 6 of the amending legislation states "[t]he changes in law made by this Act in relation to employment termination reports apply only to an employment termination report under Subchapter J, Chapter 1701, Occupations Code, regarding a resignation or termination that occurs on or after the effective date of this Act. An employment termination report regarding a resignation or termination that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date and that law is continued in effect for that purpose." Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.

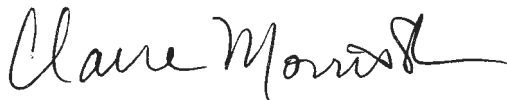
Occ. Code. § 1701.454 (repealed 2005). Upon review, we find the F-5 form created prior to September 1, 2011 is not subject to release under the provisions of former section 1701.454. Therefore, the authority must withhold the F-5 form created prior to September 1, 2011, under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code.

In summary, the submitted commission identification number is not subject to the Act and the authority is not required to release it. The authority must withhold the submitted L-2A, L-3A, and L-3p declaration forms under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code and must withhold the submitted F-5 form under section 552.101 in conjunction with former section 1701.454 of the Occupations Code. The authority must release the remaining 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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 649372

Enc. Submitted documents

c: Requestor  
(w/o enclosures)