



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2017

Ms. Lola Hazel
City Secretary
City of Giddings
118 East Richmond Street
Giddings, Texas 78942

OR2017-07995A

Dear Ms. Hazel:

Our office issued Open Records Letter No. 2017-07995 (2017) on April 17, 2017. We have examined our letter and determined there was an error. Where this office determines that an error was made in the decision process under section 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued letter. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on April 17, 2017. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")). Your request was assigned ID# 665614.

The Giddings Police Department (the "department") received a request for all employment records, including internal investigations and complaints, for two former, named officers. 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 under sections 552.101, 552.115, 552.119, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the requested information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-08936 (2016). In Open Records Letter No. 2016-08936 we concluded: (1) an officer's TCOLE number is not subject to the Act and need not be released to the requestor; (2) the department must withhold the submitted L-2 and L-3 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; (3) the department must withhold the L-3 declaration form under section 552.101 of the Government Code in conjunction with current section 1701.306 of the Occupations Code; (4) the department must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (5) the department must withhold the personal e-mail addresses it marked under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release; (6) the department must withhold the date of birth of a department employee under section 552.102(a) of the Government Code; and (7) the department must release the remaining information. We have no indication the law, facts, or circumstances on which Open Records Letter No. 2016-08936 was based have changed. Accordingly, to the extent the requested information is identical to the information previously ruled on by this office, we conclude the department must continue to rely on Open Records Letter No. 2016-08936 as a previous determination and withhold or release the information 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will consider your arguments for the requested information that was not at issue in the previous ruling.

You state 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(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 TCOLE identification numbers is a unique computer-generated number assigned to peace officers for identification in TCOLE'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.

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[.]"¹ *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the department must withhold the dates of birth of employees we marked under section 552.102(a) of the Government Code.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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find a portion of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the information at issue is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the department must withhold the information at issue, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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 id.* § 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. 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). Other entities specified in chapter 411 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. 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). Upon review, we find the information we marked consists of CHRI the department must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.³ However, we find the remaining information does not constitute CHRI

³As our ruling is dispositive, we need not address your argument against disclosure of this information.

subject to section 411.083 of the Government Code and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by the Department Public Safety (“DPS”) concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides, in relevant part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual’s name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a)-(b). The information we marked consists of concealed handgun license information obtained from DPS. In this instance, the requestor is neither the license holder nor a criminal justice agency. Thus, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.⁴

Section 552.101 of the Government Code encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to 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 [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 [TCOLE] member or other person may not release information submitted under this subchapter.

⁴As our ruling is dispositive, we need not address your argument against disclosure of this information.

Occ. Code § 1701.454. The submitted information includes F-5 Reports of Separation of Licensee. The information at issue does not indicate the officers at issue resigned or were terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the department must withhold this information at issue, which we marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. You also seek to withhold L-1 (Report of Appointment/License Application) forms under section 1701.454. We note section 1701.454 is applicable only to information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. *See id.* § 1701.454(a). The only report or statement found in subchapter J is a Form F-5. *See id.* § 1701.452. We therefore conclude the department may not withhold L-1 forms under section 552.101 on this basis. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). Additionally, the court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of public employee's resignation or termination), 423 at 2 (1984). We further note an individual's name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not invasion of privacy).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked, as well as public citizens' dates of birth, under section 552.101

of the Government Code in conjunction with common-law privacy.⁵ However, upon review, we find you have not demonstrated any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.115 of the Government Code excepts from disclosure “[a] birth or death record maintained by the vital statistics unit of the Department of State Health Services or a local registration official[.]” Gov’t Code § 552.115. Section 552.115 is applicable only to information maintained by the vital statistics unit or local registration official. *See* Open Records Decision No. 338 (1982). The submitted birth certificate is maintained by the department, and not by a vital statistics unit or local registration official. Therefore, the department may not withhold it under section 552.115 of the Government Code.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov’t Code § 552.117(a)(2). We note section 552.117(a)(2) protects a peace officer’s personal cellular telephone number only if the officer pays for the cellular telephone or pager service with his or her personal funds. *See* Open Records Decision Nos. 670 at 6 (2001) (Gov’t Code § 552.117(a)(2) excepts from disclosure peace officer’s cell phone or pager number if officer pays for cell phone or pager service), 506 at 5-6. We further note a post office box number is not a “home address” for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 552.117 is to protect public employees from being harassed at home). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individuals whose information is at issue are currently licensed peace officers, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the cellular telephone numbers may only be withheld if the peace officers at issue pay for their cellular telephone service with their own funds.

If the individuals at issue are no longer licensed peace officers, then the marked information may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals at issue are no longer licensed peace officers, and if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the cellular telephone numbers may only be withheld if the cellular service is not paid for by a governmental body. If the employees at issue did not timely request confidentiality under section 552.024, the department may not withhold the information at issue under section 552.117(a)(1).

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. Gov't Code § 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). Some of the remaining information pertains to peace officers and is held by the department in a non-employment capacity. Thus, to the extent the information we marked pertains to a currently licensed peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code. If the individuals whose information we marked are no longer licensed peace officers or no election is made, the department may not withhold this information under section 552.1175 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. Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130. Additionally, we find the submitted audiovisual recordings contain confidential motor vehicle record information. In this instance, you state the department does not possess the technological capability to redact information from the recordings. Thus, the department must also withhold the submitted audiovisual recordings in their entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

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 we marked are not of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the department must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release.

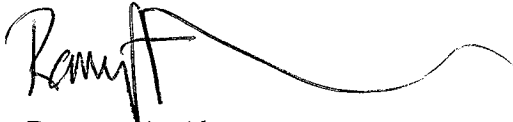
In summary, to the extent the requested information is identical to the information previously ruled on by this office, we conclude the department must continue to rely on Open Records Letter No. 2016-08936 as a previous determination and withhold or release the information in accordance with that ruling. The TCOLE identification numbers are not subject to the Act and need not be released to the requestor. The department must withhold the dates of birth of employees we marked under section 552.102(a) of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The department must withhold the information we marked, as well as public citizens’ dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information is at issue are currently licensed peace officers, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the cell phone numbers may only be withheld if the officers pay for the cellular telephone service. If the individuals at issue are no longer licensed peace officers, and if the individuals timely requested confidentiality pursuant to section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the cell phone numbers may only be withheld if the officers pay for the cellular telephone service. To the extent the information we marked pertains to a currently licensed peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we marked under section 552.1175 of the Government Code. The department must withhold the motor vehicle record information we marked and the submitted audiovisual recordings in their entirety under section 552.130. The department must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the

addresses affirmatively consent to their release. The department must release the remaining information.⁶

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,

A handwritten signature in black ink, appearing to read "Ramsey A. Abarca", with a long, sweeping horizontal line extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 665614

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶We note the information being released may contain social security numbers subject to section 552.147 of the Government Code. 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 officer under the Act. Gov't Code § 552.147(b).