



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2017-09885

Dear Mr. Beauchamp:

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# 656565.

The Texas Commission on Law Enforcement ("TCOLE") received a request for F-5 reports of a TCOLE licensee.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception 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." *Id.* § 552.101. Section 552.101 of the Government Code encompasses former section 1701.454 of the Occupations Code. We note the submitted information includes F-5 forms 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 forms at issue are governed by the previous version of

¹As you have not submitted a copy of the request for information, we take our description from your brief.

²We note TCOLE did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

section 1701.454. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.³ Former section 1701.454 provides as follows:

(a) A report or statement 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 subsection, a [TCOLE] 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 [TCOLE] 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 [TCOLE] 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.

Occ. Code. § 1701.454 (repealed 2005). Upon review, we find the F-5 forms created prior to the effective date of the amendment of section 1701.454 are not subject to release under the provisions of former section 1701.454. Therefore, TCOLE must withhold the F-5 forms created prior to the effective date of the amendment of section 1701.454 under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the current 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:

³Section 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.

(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.

Id. § 1701.454. The remaining information consists of F-5 reports created after the effective date of the amendment of section 1701.454. The information at issue does not indicate the named officer resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, TCOLE must withhold the remaining F-5 reports under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

In summary, TCOLE must withhold the F-5 forms created prior to the effective date of the amendment of section 1701.454 under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code. TCOLE must withhold the remaining F-5 reports under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/sdk

Ref: ID# 656565

Enc. Submitted documents

c: Requestor
(w/o enclosures)