



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 30, 2017

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

OR2017-14711

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# 664365.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named officer. You claim the submitted information is either not subject to the Act or excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, 552.147, and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, the sheriff's office notes the submitted information contains a Texas Commission on Law Enforcement ("TCOLE") identification number. 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:

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<sup>1</sup>We understand the sheriff's office to raise sections 552.102 and 552.147 of the Government Code based on its markings in the submitted information.

(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. 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 a TCOLE identification number is a unique computer-generated number assigned to licensees for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act, and the sheriff's office need not 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. This section encompasses information made confidential by other statutes, such as section 261.201(a) 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 this chapter 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 used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The sheriff's office asserts some of the requested information was used or developed in an investigation by the sheriff's office under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1) (defining "abuse" for purposes of section 261.201). Upon review, we find the sheriff's office has not established any of the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Therefore, the submitted information is not confidential under section 261.201(a) of the Family Code and the sheriff's office may not withhold it under section 552.101 on that ground.

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(a)*. Portions of the remaining information, which the sheriff's office has marked and we marked, consist of motor vehicle record information. Accordingly, the sheriff's office must withhold the motor vehicle record information it marked and the additional information we marked under section 552.130 of the Government Code.<sup>2</sup>

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." *Id.* § 552.102(a). The Texas Supreme Court has considered the applicability of section 552.102, and has 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, 348 (Tex. 2010). Accordingly, the sheriff's office must withhold the dates of birth of public employees under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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(a)(2) protects a peace officer's personal cellular telephone number only if the officer pays for the cellular telephone 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 cellular telephone number if officer pays for service), 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use)*. 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*

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<sup>2</sup>As our ruling for this information is dispositive, we need not address remaining arguments against its disclosure.

Gov't Code § 552.117 is to protect public employees from being harassed at home). Accordingly, with the exception of the information we marked for release, the sheriff's office must withhold the information it marked and the information we marked under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body.<sup>3</sup>

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). *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the sheriff's office must withhold the e-mail address it marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

Section 552.152 of the Government Code provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You assert some of the submitted information, which you have marked, contains the name and images of undercover officers and release of this information would put their lives at risk. Upon review, we find the sheriff's office has demonstrated release of the information at issue would subject these officers to a substantial threat of bodily harm. Accordingly, the sheriff's office must withhold the information it marked under section 552.152 of the Government Code.

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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*,

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<sup>3</sup>As our ruling for this information is dispositive, we need not address remaining arguments against its disclosure.

No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Further, we note there is a legitimate public interest in an applicant's background and qualifications for government employment, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1986) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (scope of public employee privacy is narrow). Additionally, this office has found that common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of this information pertains to individuals who have already been de-identified and whose privacy interests are protected. Accordingly, with the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

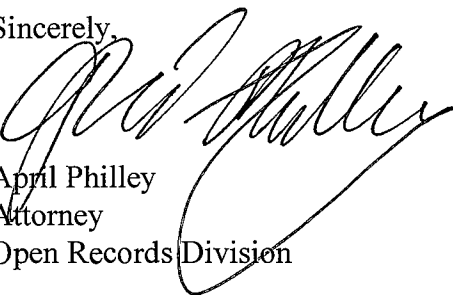
We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the sheriff's office need not release the submitted TCOLE identification number. The sheriff's office must withhold: (1) the motor vehicle record information it marked under section 552.130 of the Government Code; (2) the dates of birth of public employees under section 552.102 of the Government Code; (3) the information it marked and the information we marked under section 552.117(a)(2) of the Government Code, but may only withhold the marked cellular telephone number if the telephone service is not paid for by a governmental body; (4) the e-mail address it marked under section 552.137 of the Government Code; (5) the information it marked under section 552.152 of the Government Code; and (6) with the exception of the information we have marked for release, the information it marked and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must release the remaining information in accordance with copyright law.

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,



April Philley  
Attorney  
Open Records Division

AP/sb

Ref: ID# 664365

Enc. Submitted documents

c: Requestor  
(w/o enclosures)