



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2017

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, Third Floor
Richmond, Texas 77469

OR2017-16512

Dear Mr. Grove:

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# 667660.

The Fort Bend County Fire Marshal's Office (the "fire marshal's office") received a request for the requestor's personnel file.¹ We understand the fire marshal's office has released some information to the requestor. We also understand you have redacted some motor vehicle record information pursuant to section 552.130(c) of the Government Code.² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.³ We have considered the exception you claim and reviewed the submitted information.

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

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

³We note the fire marshal's office did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(e). Nevertheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness. Thus, we will consider the applicability of section 552.101 to the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, we note the submitted information includes a peace officer's 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:
 - (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 the submitted TCOLE identification number is a unique computer-generated number assigned to a peace officer for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the submitted TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted TCOLE number is not subject to the Act and the fire marshal's office need not release this information 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." *Id.* § 552.101. Section 552.101 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.* § 411.082(2). 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 law with respect to CHRI it generates. *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. We understand the fire marshal's office is authorized to obtain CHRI from DPS. *See id.* § 411.083(b)(1). Section 411.0845 provides in relevant part:

(a) [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to [DPS] or the Federal Bureau of Investigation [(“FBI”)] relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to [DPS] or the [FBI].

...

(d) [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). We note the confidentiality provisions that govern CHRI do 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 criminal justice system). We also note the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Furthermore, we note FBI numbers constitute CHRI generated by the FBI. Upon review, we find some of the remaining information, which we have marked, consists of CHRI, portions of which were obtained through the DPS criminal history clearinghouse. Accordingly, the marked information is confidential under chapter 411 of the Government Code, and the fire marshal's office must withhold it under section 552.101 of the Government Code on this basis. However, upon review, we find you have not demonstrated the applicability of either section 411.083 or section 411.0845 to the remaining information. Consequently, the fire marshal's office may not withhold any of the remaining information under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by 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.

Occ. Code. § 1701.454. The remaining 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 fire marshal's office must withhold the submitted F-5 forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, upon review, we find you have not demonstrated the remaining information was submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Accordingly, we conclude the fire marshal's office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations 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. 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*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the fire marshal's office must withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 exempted from public release.⁴ See Gov't Code § 552.130. Accordingly, the fire marshal's

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the fire marshal's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with sections 411.083 and 411.0845 of the Government Code. The fire marshal's must withhold the submitted F-5 forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The fire marshal's office must withhold the public citizen's date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The fire marshal's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The fire marshal's office must release the remaining information.⁵

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

⁵We note the requestor has a right of access beyond that of the general public to some of the information being released. See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Thus, if the fire marshal's office receives another request for this information from a different requestor, then the fire marshal's office must again seek a decision from this office.

Ref: ID# 667660

Enc. Submitted documents

c: Requestor
(w/o enclosures)