



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 9, 2017

Ms. Agatha Wade
Assistant Criminal District Attorney
Civil Section
Bexar County Criminal District Attorney's Office
101 West Nueva Street, 7th Floor
San Antonio, Texas 78205

OR2017-18001

Dear Ms. Wade:

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# 670129 (BCCDA File #5811).

The Bexar County Criminal District Attorney's Office (the "district attorney's office") received a request for information pertaining to a named police officer, including information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.1175, 552.130, and 552.147 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note 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:
 - (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 district attorney’s office need not release it to the requestor.

Next, we must address the requestor’s assertion the district attorney’s office failed to comply with section 552.301(e-1) of the Government Code in requesting this decision. Section 552.301(e-1) requires a governmental body that submits written comments requesting a ruling to the attorney general under subsection 552.301(e)(1)(A), to send a copy of those comments to the person who requested the information from the governmental body not later than the fifteenth business day after the date of receiving the written request. *Id.* § 552.301(e-1). The district attorney’s office and the requestor agree the district attorney’s office received the instant request on May 16, 2017. The district attorney’s office informs us it was closed on May 29, 2017 in observance of Memorial Day. This office does not

count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. As such, the fifteen-business-day deadline was June 7, 2017. The requestor states, and provides documentation showing, the district attorney's office's written comments were sent to the requestor in an envelope meter-marked June 8, 2017. Consequently, we conclude that, in sending the requestor a copy of its written comments, the district attorney's office did not comply with section 552.301 of the Government Code. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first-class United States mail, common or contract carrier, or interagency mail).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e-1) results in the legal presumption that the information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The district attorney's office claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.1175, 552.130, and 552.147 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure. Because sections 552.101, 552.1175, and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining arguments.

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 section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except 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). Thus, any CHRI obtained from DPS or any other

criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note, however, driving record information is not considered criminal history information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find the information we have marked consists of CHRI the district attorney's office must withhold under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue consists of CHRI for section 411.083 purposes. Accordingly, no portion of the remaining information may be withheld under section 552.101 in conjunction with section 411.083.

Section 552.101 of the Government Code also encompasses sections 772.118, 772.218, and 772.318 of the Health and Safety Code. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218, and 772.318 are applicable to emergency 9-1-1 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000. Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.

You assert the remaining information contains the originating telephone numbers of 9-1-1 callers. You do not inform us, however, whether Bexar County (the "county") is part of an emergency communication district established under section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. Nevertheless, if the county is part of an emergency communication district established under one of these sections, then, to the extent the telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier, the district attorney's office must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. If the county is not subject to section 772.118, section 772.218, or section 772.318, or if the telephone numbers were not supplied by a 9-1-1 service supplier, then the district attorney's office may not withhold this information under section 552.101 on the basis of section 772.118, section 772.218, or section 772.318 of the Health and Safety 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. *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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Here, we note the requestor is the authorized representative of one of the involved individuals. Therefore, the requestor has a right of access to his client's private information under section 552.023 of the Government Code. The information about the requestor's client may not be withheld from the requestor under section 552.101 on that basis. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, with the exception of the requestor's client's date of birth, the department must withhold all public citizens' dates of birth and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. *See* 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). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1998). We note the remaining information includes the home address, personal cellular telephone number, social security number, and family member information of San Antonio Police Department employees. However, as we are unable to determine if the individuals at issue are currently licensed peace officers, we must rule conditionally. If the individuals whose information is at issue are currently licensed peace officers and elect to restrict access to the information in accordance with section 552.1175(b), then the district attorney's office must withhold their home address, personal cellular telephone number, social security number, and family member information under section 552.1175 of the Government Code. If the individuals whose information is at issue are not currently licensed peace officers, or no election is made, then the district attorney's office may not withhold their home address, personal cellular telephone number, social security number, or family member information under section 552.1175(b) 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(a). Portions of the remaining

information contain information subject to section 552.130. We note section 552.130 protects personal privacy. We further note some of the submitted motor vehicle record information belongs to the requestor's client, and, as such, may not be withheld from this requestor under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Thus, the district attorney's office must withhold the motor vehicle record information that does not belong to the requestor's client under section 552.130 of the Government Code.

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.

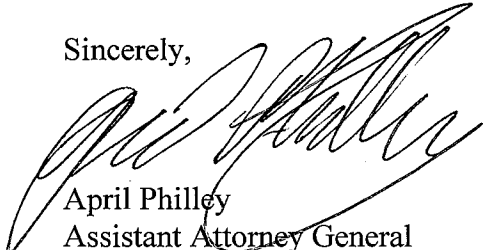
In summary, the district attorney's office need not release the submitted TCOLE identification numbers. The district attorney's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. If the county is part of an emergency communication district established under one of these sections, then, to the extent the telephone numbers of the 9-1-1 callers were supplied by a 9-1-1 service supplier, the district attorney's office must withhold this information under section 552.101 of the Government Code in conjunction with section 772.118, section 772.218, or section 772.318 of the Health and Safety Code. With the exception of the requestor's client's date of birth, the department must withhold all public citizens' dates of birth and the additional information we have marked 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 and elect to restrict access to the information in accordance with section 552.1175(b), then the district attorney's office must withhold their home address, personal cellular telephone number, social security number, and family member information under section 552.1175 of the Government Code. The district attorney's office must withhold the motor vehicle record information that does not belong to the requestor's client under section 552.130 of the Government Code. The district attorney's office must release the remaining information in accordance with copyright law.²

²Section 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 office under the Act. The requestor has a right, however, to his client's social security number. *See generally* Gov't Code § 552.023(b).

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,



April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 670129

Enc. Submitted documents

c: Requestor
(w/o enclosures)