



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 5, 2017

Ms. Natalie Barnett  
Assistant County Attorney  
Parker County  
118 West Columbia Street  
Weatherford, Texas 76086

OR2017-22780

Dear Ms. Barnett:

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# 678391.

The Parker County Sheriff's Office (the "sheriff's office") received a request for information pertaining to use of force complaints and employment information pertaining to two named deputies.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.115, 552.117, 552.130, 552.134, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The sheriff's office states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note 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 number 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.

Next, we must address the sheriff's office's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You state the sheriff's office received the clarified request on July 17, 2017. Accordingly, the sheriff's office's ten-business-day deadline was July 31, 2017. Although you timely raised sections 552.101, 552.103, and 552.117 within the ten-business-day time period, you did not raise sections 552.102, 552.108, 552.115, 552.130, 552.134, and 552.137 of the Government Code until after the ten-business-day period had passed.

Consequently, we find the sheriff's office failed to comply with the procedural requirements of section 552.301 with respect to its claims under these sections.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). By failing to timely raise section 552.108 of the Government Code, we find the sheriff's office has failed to establish a compelling reason to address its claim under this section and no portion of the submitted information may be withheld under section 552.108. However, we will consider the sheriff's office's timely raised exceptions to the submitted information. Further, because sections 552.102, 552.115, 552.130, 552.134, and 552.137 can provide compelling reasons to overcome the presumption of openness, we will also consider your arguments under these sections for the information at issue.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [of the Government Code];

Gov't Code § 552.022(a)(1). We note a portion of the information consists of completed investigations subject to section 552.022(a)(1). The sheriff's office must release this information unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. *Id.* § 552.022(a)(1). Although you assert section 552.103 of the Government Code for the information subject to section 552.022(a)(1) this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; *see also* Open Records Decision No. 665 at 2 n.5. Therefore, the sheriff's office may not withhold the information subject to sections 552.022(a)(1), which we have marked, under section 552.103 of the Government Code. However, you also raise section 552.101 of the Government Code, which protects information made confidential under law, for some of the information at issue. Further, we note portions of the information at issue may be subject to section 552.117 of the Government Code, which makes information confidential under the Act. Accordingly, we will address the applicability of sections 552.101 and 552.117 to the information subject to

section 552.022(a)(1). Additionally, we will address your arguments against disclosure for the information not subject to section 552.022(a)(1).

Section 552.103 of the Government Code provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The sheriff's office states, and provides documentation showing, a complaint styled *Walker v. Parker County Sheriff's Office*, Case No. 4:17-cv-072-A, was pending against the sheriff's office in the United States District Court for the Northern District of Texas when it received the instant request for information. You state the information at issue is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the sheriff's office received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the sheriff's office may withhold the submitted information not subject to section 552.022 under section 552.103(a) of the Government Code.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further,

the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). 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.). This office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. See, e.g., Open Records Decision Nos. 470 at 4 (job performance does not generally constitute public employee’s private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee’s job was performed cannot be said to be of minimal public interest).

Upon review, we find some of the remaining information satisfies the standard established by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff’s office must withhold all living public citizens’ dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon review, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the sheriff’s office may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. See 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 have marked information under section 552.117 that consists of the personal information of a peace officer who was employed by the sheriff’s office and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as

defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual whose information is at issue is no longer a licensed peace officer as defined by article 2.12, then the sheriff's office may not withhold the marked information under section 552.117(a)(2).

If the information we marked under section 552.117 pertains to an individual who is no longer a licensed peace officer, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individual at issue is no longer a peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue is no longer a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then the sheriff's office may not withhold the marked information under section 552.117(a)(1).

In summary, the submitted TCOLE identification numbers are not subject to the Act and need not be released to the requestor. The sheriff's office may withhold the submitted information not subject to section 552.022 under section 552.103(a) of the Government Code. The sheriff's office must withhold all living public citizens' dates of birth and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, then the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. If the individual at issue is no longer a peace officer as defined by article 2.12 and if this individual timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the marked information under section 552.117(a)(1) of the Government Code. The sheriff's office must release the remaining information.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/gw

Ref: ID# 678391

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)