



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 7, 2017

Ms. Ann-Marie Sheely
Assistant County Attorney
Travis County Attorney's Office
P.O. Box 1748
Austin, Texas 78767

OR2017-25489

Dear Ms. Sheely:

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# 683220.

The Travis County Sheriff's Office (the "sheriff's office") received a request for all records related to the employment and termination of a named former employee. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note the submitted information contains 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:

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.

- (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 officer's 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 need not be released to the requestor.²

Next, we note some of the remaining requested information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2017-13124 (2017) and 2017-22590 (2017). In Open Records Letter No. 2017-13124, we determined the sheriff's office: (1) may withhold certain information under section 552.103(a) of the Government Code; (2) must withhold certain information under section 552.101 of the Government Code in conjunction with common-law privacy; (3) must withhold certain information under section 552.117(a)(2) of the Government Code; and (4) must release the remaining information. In Open Records Letter No. 2017-22590, we determined the sheriff's office may withhold the information at issue under section 552.103(a) of the Government Code. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, to the extent the remaining requested information is identical to the information previously requested and ruled upon, the sheriff's office must continue to rely on Open Records Letter

²As we are able to make this determination, we need not address your arguments against disclosure of this information.

Nos. 2017-13124 and 2017-22590 as previous determinations and withhold or release the identical information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the requested information is not subject to the previous rulings, we will consider your arguments against disclosure of the information at issue.

Next, we note some of the remaining 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]; [and]

...

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(1), (15). We note portions of the remaining information consist of completed audits, reports, evaluations, and investigations subject to section 552.022(a)(1). Additionally, some of the submitted information consists of job descriptions subject to section 552.022(a)(15). The sheriff's office must release the information subject to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). To the extent the sheriff's office considers the job descriptions open to the public, you may withhold the information subject to section 552.022(a)(15) only to the extent this information is confidential under the Act or other law. *See id.* § 552.022(a)(15). You raise section 552.103 for the information at issue. However, section 552.103 does not make information confidential under the Act. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, you may not withhold the information subject to section 552.022(a)(1) of the Government Code under section 552.103 of the Government Code. Further, if the sheriff's office considers the job descriptions open to the public, then it is subject to section 552.022(a)(15) and the sheriff's office may not

withhold that information under section 552.103 of the Government Code. However, as sections 552.101, 552.117, 552.1175, 552.130, and 552.137 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the submitted information.³ Further, we will consider your assertion of section 552.103 for the information not subject to section 552.022 of the Government Code.

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). The 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 that (1) litigation is 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). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

For purposes of section 552.103, "litigation" includes contested cases conducted in a quasi-judicial forum. Open Records Decision Nos. 588 at 2 (1991), 474 at 6 (1987), 368 at 2 (1983), 301 at 1-2 (1982). Factors this office considers in determining whether an administrative proceeding is conducted in a quasi-judicial forum include whether the administrative proceeding provides for discovery, evidence to be heard, factual questions to be resolved, the making of a record, and whether the proceeding is an adjudicative forum of

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

first jurisdiction with appellate review of the resulting decision without a re-adjudication of fact questions. *See* ORD 588 at 3-4.

You state the sheriff's office set up a Civil Service Commission for the resolution of grievances under section 158.032 of the Local Government Code. *See* Local Gov't Code § 158.032 (providing a sheriff's department in a county with a population of more than 500,000 may, in accordance with subchapter, create a civil service system). You state, pursuant to the authority of section 158.035 of the Local Government Code, the sheriff's office has established procedures for grievances. *See id.* § 158.035(a)(6) (providing for the adoption, publication and enforcement of rules regarding grievance procedures). You argue the sheriff's office's grievance procedures constitute "litigation" for purposes of section 552.103 because the procedures include discovery, witness testimony at an adversarial hearing, and creation of a record or transcript of the proceedings. Upon review, we find the sheriff's office's administrative grievance procedures are conducted in a quasi-judicial forum and, thus, constitute litigation for purposes of section 552.103.

You state the information at issue directly relates to a civil service grievance proceeding against the sheriff's office. You indicate the grievance at issue was filed prior to the sheriff's office's receipt of the instant request for information. Upon review, we find you have demonstrated the sheriff's office was a party to litigation at the time it received the request for information. You inform us the grievance hearing at issue pertains to the demotion, suspension, or removal of the named former employee. Based on these representations and our review, we find you have established the information at issue is related to the pending litigation for purposes of section 552.103(a). Therefore, the sheriff's office may withhold the remaining information not subject to section 552.022 of the Government Code under section 552.103(a) of the Government Code.⁴

However, once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

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 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

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, 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.). However, this office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (scope of public employee privacy is narrow). Upon review, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is not highly intimate or embarrassing and not of legitimate public concern, and the sheriff's office may not withhold it under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(4) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(4). Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(4) of the Government Code.

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 id.* § 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 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 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance we are unable to determine whether the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12; therefore, we must rule conditionally. If the individuals at issue are currently-licensed peace officers as defined by article 2.12, then the sheriff's office must withhold the information we

have marked under section 552.117(a)(2) of the Government Code. However, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Conversely, if the individuals at issue are not currently licensed peace officers as defined by article 2.12, the sheriff's office may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

Section 552.117(a)(1) of the Government Code 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 or official 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). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. 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 or official 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 or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals at issue are not currently-licensed peace officers defined by article 2.12 of the Code of Criminal Procedure, but timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the individuals at issue are not currently-licensed peace officers defined by article 2.12 of the Code of Criminal Procedure and did not timely request confidentiality under section 552.024, the sheriff's office may not withhold the information under section 552.117(a)(1).

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. Gov't Code § 552.1175(b). 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 telephone service is paid for by a governmental body. *See* ORD 506 at 5-6. Some of the remaining information pertains to a peace officer that is not held by the sheriff's office in an employment capacity. Thus, to the extent the information we have marked relates to a licensed peace officer who elects to restrict access to his information in accordance with

section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, the cellular telephone number at issue may only be withheld under section 552.1175 if a governmental body does not pay for the cellular telephone service. If the individual whose information is at issue is not a currently-licensed peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the submitted TCOLE identification number is not subject to the Act and need not be released to the requestor. To the extent the remaining requested information is identical to the information previously requested and ruled upon, the sheriff's office must continue to rely on Open Records Letter Nos. 2017-13124 and 2017-22590 as previous determinations and withhold or release the identical information at issue in accordance with those rulings. The sheriff's office may withhold the remaining information not subject to section 552.022 of the Government Code under section 552.103(a) of the Government Code. The sheriff's office must withhold the information we have marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the information we have marked under section 552.117(a)(4) of the Government Code. If the individuals at issue are currently-licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. To the extent the individuals at issue are not currently-licensed peace officers defined by article 2.12 of the Code of Criminal Procedure, but timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the marked cellular

telephone numbers if the cellular telephone service is not paid for by a governmental body. To the extent the information we have marked relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, the cellular telephone number at issue may only be withheld under section 552.1175 if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. 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, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 683220

Enc. Submitted documents

c: Requestor
(w/o enclosures)