



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2018

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

OR2018-02416

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# 694069 (Doc. ID No. 547335-1).

The Travis County Constable's Office, Precinct Two, (the "constable's office") received a request for all records pertaining to the requestor's employment or prospective employment with the constable's office. The constable's office states it will release some information to the requestor. The constable's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, 552.130, and 552.147 of the Government Code.¹ We have considered the constable's office's claimed exceptions and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹Although the constable's office claims section 552.117 of the Government Code for portions of the submitted information, section 552.1175 is the proper exception to raise in this instance because the constable's office does not hold the submitted information in an employment capacity of the individual at issue.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, we note the submitted information includes an officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as the following:

[I]nformation 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.

Id. § 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 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. Thus, we find the officer's TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's TCOLE number is not subject to the Act and need not be released to the requestor.

Next, we must address the requestor's claim the constable's office failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated

exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the constable's office received the request for information on November 6, 2017. The constable's office informs us it was closed on November 10, 23, and 24. We note this office does not count the date the request was received for holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the constable's office's ten- and fifteen-business-day deadlines were November 21, 2017, and November 30, 2017, respectively. The constable's office requested a ruling and submitted the information required under sections 552.301(b) and 552.301(e) to this office on November 21, 2017, and November 30, 2017, respectively. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the constable's office complied with the requirements of section 552.301 in requesting this decision from our office.

Next, we note the responsive information includes a court-filed document. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record[,] unless the information is expressly made confidential under the Act or other law. *Id.* § 552.022(a)(17). We note common-law privacy is not applicable to information contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, no portion of the court-filed document may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, as sections 552.130 and 552.136 of the Government Code make information confidential for purposes of section 552.022(a)(17), we will consider the applicability of these exceptions to the court-filed document.³ Further, we will address the constable's office's arguments against disclosure of the remaining responsive information.

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 the federal Fair Credit Reporting Act (the "FCRA"), 15 U.S.C. § 1681 *et seq.* Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See id.* § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining "person" and "consumer report"). A criminal history report compiled by a private consumer reporting agency is a "consumer report" under the FCRA. *See id.* § 1681a(d) (defining "consumer report"). Section 1681b further provides "[a] person shall not use or obtain a consumer report for any purpose

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).

unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.” *Id.* § 1681b(f). Section 1681e provides for the maintenance of procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See id.* § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (stating that federal law strictly limits distribution of consumer credit reports by credit reporting agencies). The constable’s office states the responsive information contains a consumer report furnished to the constable’s office by a consumer agency for purposes of section 1681b of the FCRA. We note the FCRA does not permit the disclosure of information in a consumer report for the purpose of responding to a request for information under the Act. Therefore, the constable’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the FCRA.

Section 552.101 of the Government Code also encompasses information protected by 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* Gov’t Code § 411.083(a). 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 laws with respect to the CHRI it generates. *See 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(a). 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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find a portion of the responsive information consists of CHRI that is confidential under section 411.083. Thus, the constable’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, we find the constable’s office has not demonstrated any portion of the remaining responsive information consists of CHRI for purposes of chapter 411 of the Government Code, and the constable’s office may not withhold any of it under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find a portion of the remaining information, which we have marked, consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, the constable’s office must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.⁴ However, we find the constable’s office has not demonstrated any of the remaining information consists of a mental health record for purposes of chapter 611 of the Health and Safety Code. Accordingly, the constable’s office may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which makes confidential the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE.⁵ Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

⁴We note this ruling does not affect an individual’s right of access to his or her own mental health records from the professional who provided treatment under chapter 611 of the Health and Safety Code. *See* Health & Safety Code § 611.004(a)(3); *cf. Abbott v. Tex. State Bd of Pharmacy*, 391 S.W.3d 253 (Tex. App.—Austin 2012, no pet.) (MPA does not provide general right of access to medical records from governmental body responding to a request for information under the Public Information Act).

⁵The Texas Commission on Law Enforcement Officer Standards and Education was renamed TCOLE by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Therefore, the constable's office must withhold the L-3 declaration forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. However, we find none of the remaining information consists of L-2 or L-3 declaration forms. Accordingly, section 1701.306 is not applicable to any of the remaining information, and the constable's office may not withhold any of it under section 552.101 on that basis.

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. Some of the remaining information pertains to individuals who may be subject to section 552.1175. Thus, the constable's office must withhold the information we have marked under section 552.1175 if it pertains to individuals who are subject to section 552.1175(a) and the individuals elect to restrict access to their information in accordance with section 552.1175(b). If the individuals are not subject to section 552.1175(a) or do not elect to restrict access to this information in accordance with section 552.1175(b), then the constable's office may not withhold this information under section 552.1175.

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 doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of

which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code § 411.082 (2)(B)* (criminal history record information does not include driving record information). However, criminal history information provided by a department officer as part of an application for employment with the department was not compiled by any governmental body. Further, when an officer's criminal history information is compiled in the course of the officer's pre-employment screening, there is a legitimate public interest in the information. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987)*. However, this office has concluded 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. 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), 470 at 4 (1987) (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), 392 (1982) (reasons for employee's resignation ordinarily not private). We further note the scope of a public employee's privacy is narrow. *See Open Records Decision No. 423 at 2 (1984)*. The Third 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.). We note the requestor has a right of access to information pertaining to herself that would otherwise be confidential under common-law privacy. *See Gov't Code § 552.023(a)* ("a person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to a person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); *Open Records Decision No. 481 at 4 (1987)* (privacy theories not implicated when individual requests information concerning herself).

Upon review, we find portions of the remaining responsive information not subject to section 552.022(a)(17) of the Government Code satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of this information pertains to an individual who may be de-identified and whose privacy interest will, thus, be protected. Therefore, with the exception of information pertaining to a de-identified individual, the constable's office must withhold the information we have marked under section 552.101 of

the Government Code in conjunction with common-law privacy. However, we find constable's office has not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the constable's office may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). However, section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 329 (Tex. App.—Austin 2002, no pet.) (section 552.108 generally not applicable to law enforcement agency's personnel records); Open Records Decision No. 350 at 3-4 (1982). The remaining responsive information consists of personnel records. Although the constable's office states the information at issue relates to a pending investigation, upon review we find it has failed to demonstrate release of this information would interfere with the detection, investigation, or prosecution of crime. Therefore, the constable's office may not withhold any of this information under section 552.108(a)(1) 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. Upon review, we find portions of the remaining responsive information consist of motor vehicle record information. However, we note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the constable's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, no portion of the remaining responsive information constitutes motor vehicle record information subject to section 552.130, and the constable's office may not withhold any of it on this basis.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected,

assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the constable’s office must withhold the account numbers we have marked under section 552.136 of the Government Code.

We note the remaining information contains e-mail addresses that are subject to section 552.137 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). We note the requestor has a right to her own e-mail address under section 552.137(b). *Id.* § 552.137(b). The remaining e-mail addresses at issue are not excluded by subsection (c). Therefore, with the exception of the requestor’s email addresses, the constable’s office must withhold all personal e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). The constable’s office seeks to withhold a social security number in the remaining information. The requestor has a right, however to her own social security number. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). Accordingly, the constable’s office may not withhold the social security number in the remaining information under section 552.147 of the Government Code.

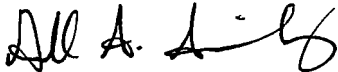
In summary, the officer’s TCOLE number is not subject to the Act and need not be released to the requestor. The constable’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the FCRA. The constable’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The constable’s office must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The constable’s office must withhold the L-3 declaration forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The constable’s office must withhold the information we have marked under section 552.1175 of the Government Code if it pertains to individuals who are subject to section 552.1175(a) and the individuals elect to restrict access to their information in accordance with section 552.1175(b). With the exception of information pertaining to a de-identified individual, the constable’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The constable’s office must withhold the

account numbers we have marked under section 552.136 of the Government Code. With the exception of the requestor's email addresses, the constable's office must withhold all personal e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The constable's office must release the remaining responsive 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 694069

Enc. Submitted documents

c: Requestor
(w/o enclosures)