



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 20, 2018

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2018-03921

Dear Ms. Lentz:

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# 698856.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named officer. The sheriff's office claims some of the submitted information is either not subject to the Act or excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.152 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

The submitted information contains the Texas Commission on Law Enforcement ("commission") identification number of a peace officer. 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;

¹Although the sheriff's office also raises section 552.1175 of the Government Code, we note section 552.117 is the proper exception to raise for information it holds in its capacity as an employer.

(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 commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the commission website. Accordingly, we find the commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted commission identification number is not subject to the Act and the sheriff's office is not required to release it.

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 Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides in relevant part the following:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in

Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). Upon review, we find some of the submitted information, which we have marked, constitutes medical records. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.²

The information at issue contains L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms, which are required by the commission. Section 1701.306 of the Occupations Code provides in relevant part as follows:

(a) The commission may not issue a license to a person unless the person is examined by:

(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 the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). The sheriff's office must withhold these forms, which it has marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code excepts also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the

²As our ruling is dispositive, we do not address the arguments of the sheriff's office to withhold this information.

commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the commission 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 commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information contains an F-5 Separation of Licensee form that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The submitted F-5 form does not reflect the named former officer to whom this form applies was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold the submitted F-5 form, which it has marked, 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 chapter 560 of the Government Code, which provides a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). The sheriff's office does not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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 makes CHRI the Texas Department of Public Safety ("DPS") maintains confidential, except DPS may disseminate this information as provided in subchapters E-1 and F of chapter 411 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, but 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. We agree the sheriff's office must withhold the information it has marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The sheriff's office informs us the information it has marked under section 552.152 identifies undercover officers, and argues release of this information would subject the officers to a "substantial threat of physical harm." Upon review, we agree the sheriff's office must withhold the information it has marked under section 552.152.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). We note the sheriff's office seeks to withhold the date of birth of an undercover officer whose identifying information is confidential under section 552.152 of the Government Code. However, because this individual has been deidentified, the privacy interest in that individual's date of birth is sufficiently protected, and the sheriff's office may not withhold it under common-law privacy. Thus, with the exception of the date of birth of the undercover officer whose information has been deidentified under section 552.152, the sheriff's office must withhold the dates of birth it has marked under section 552.102(a) of the Government 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 the *Industrial Foundation* decision. *Id.* at 683. Additionally, this office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal

financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has found the public has a legitimate interest in information relating to the background and qualifications of employees of governmental bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990), 455 at 9 (1987) (applicant salary information is of legitimate public interest because it “bears on the applicants’ past employment record and their suitability for the employment position in question”); *see also* Open Records Decision No. 423 at 2 (1984) (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 under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the sheriff’s office may not withhold it under section 552.101 on that ground.

The sheriff’s office asserts section 552.117 of the Government Code is applicable to some of the remaining information. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 or section 552.1175 of the Government Code. 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. *Id.* Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). It is unclear whether the former employee at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, with the exception of the information we have marked for release, the sheriff’s office must withhold the information it has marked under section 552.117(a)(2) of the Government Code if the employee at issue is a currently licensed peace officer as defined by article 2.12; however, the sheriff’s office may only withhold the cellular telephone and pager numbers at issue under section 552.117(a)(2) if the cellular telephone or pager service was not provided to the former employee at public expense. If the former employee is no longer a licensed peace officer as defined by article 2.12, then the sheriff’s office may not withhold this information under section 552.117(a)(2). Section 552.117 is not applicable to the remaining information at issue, and the sheriff’s office may not withhold it on that ground.

If the former employee is no longer a licensed peace officer, then the information at issue is 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). The submitted information contains the former employee's election to keep certain information confidential under section 552.117. Therefore, if the former employee is no longer a currently licensed peace officer as defined by article 2.12, then, with the exception of the information we have marked for release, the sheriff's office must withhold the information it has marked under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the cellular telephone and pager numbers at issue under section 552.117(a)(1) if the cellular telephone or pager service was not provided to the former employee at public expense.

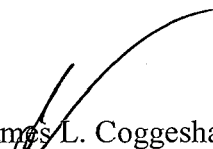
Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The sheriff's office must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

In summary, the submitted commission identification number is not subject to the Act and the sheriff's office is not required to release it. The sheriff's office must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with the MPA, section 560.003 of the Government Code, and common-law privacy; (2) the information it has marked under section 552.101 of the Government Code in conjunction with sections 1701.306 and 1701.454 of the Occupations Code; (3) the information marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (4) the information it has marked under section 552.152 of the Government Code; (5) with the exception of the date of birth of the undercover officer whose information has been deidentified under section 552.152, the dates of birth it has marked under section 552.102(a) of the Government Code; and (6) the information it has marked under section 552.130 of the Government Code. With the exception of the information we have marked for release, the sheriff's office must withhold the information it has marked under section 552.117(a)(2) of the Government Code if the former employee is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. If the former employee is no longer a currently licensed peace officer as defined by article 2.12, then, with the exception of the information we have marked for release, the sheriff's office must withhold the information it has marked under section 552.117(a)(1) of the Government Code. Regardless, the sheriff's office may only withhold the cellular telephone and pager numbers marked under section 552.117 if the cellular telephone or pager service was not provided to the former employee at public expense. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tdw

Ref: ID# 698856

Enc. Submitted documents

c: Requestor
(w/o enclosures)