



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 10, 2019

Deputy Danie Huffman
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2019-09627

Dear Deputy Huffman:

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# 758735 (ORR# 19-89).

The Parker County Sheriff's Office (the "sheriff's office") received a request for certain training information of a named deputy. The sheriff's office states it has released some of the requested information, but claims some of the submitted information is not subject to the Act and the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.152 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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

¹Although the sheriff's office raises section 552.151 of the Government Code, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. *See* Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

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.

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 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.²

Section 552.103 of the Government Code provides, in 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.

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

...

(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).

The sheriff's office informs us the named deputy was injured as a result of a weapon malfunction. The sheriff's office states it "has knowledge that there is a pending civil litigation regarding this deputy and the manufacturer of said weapon(s)." However, the sheriff's office does not inform us it is a party to that civil litigation. See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990). Accordingly, we conclude the sheriff's office may not withhold the submitted information pursuant to section 552.103 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 represents release of the submitted information that identifies undercover officers would subject the officers to a substantial threat of physical harm. Upon review, we find the sheriff's office has demonstrated release of the information at issue would subject the officers to a substantial threat of physical harm. Therefore, we conclude the sheriff's office must withhold the identifying information of the

undercover officers we have marked under section 552.152 of the Government Code.³ However, the sheriff's office has not established any of the remaining information is confidential under section 552.152, and may not withhold it on that ground.

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 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. However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find none of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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.

Section 552.102 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). Upon review, we find section 552.102(a) of the Government Code is not applicable to the remaining information. Accordingly, the sheriff's office may not withhold any of the information at issue on that basis.

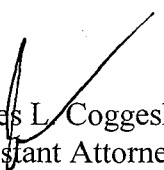
In summary, the submitted commission identification number is not subject to the Act and the sheriff's office is not required to release it. The sheriff's office must withhold the identifying information of the undercover officers we have marked under section 552.152 of the Government Code. The sheriff's 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.

³As our ruling is dispositive, we do not address the other argument of the sheriff's office to withhold this information.

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/mo

Ref: ID# 758735

Enc. Submitted documents

c: Requestor
(w/o enclosures)