



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2019

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2019-10011

Dear Mr. Beauchamp:

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# 759371 (TCOLE ID# 02 01 2019).

The Texas Commission on Law Enforcement (the "commission") received a request for information related to a named individual. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes an officer's commission 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.

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 the officer's commission identification number is a unique computer-generated number assigned to a peace officer for identification in the commission's electronic database, and may be used as an access device number on the commission website. Thus, we find the officer's commission number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's commission number is not subject to the Act and need not be released to the requestor.

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 former section 1701.454 of the Occupations Code. The submitted information includes an F-5 form created prior to the effective date of the amendment of section 1701.454 by the Seventy-ninth Legislature. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4094, 4096. Thus, the F-5 forms at issue are governed by the previous version of section 1701.454. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.¹ Former section 1701.454 provides as follows:

¹Section 6 of the amending legislation states "[t]he changes in law made by this Act in relation to employment termination reports apply only to an employment termination report under Subchapter J, Chapter 1701, Occupations Code, regarding a resignation or termination that occurs on or after the effective date of this Act. An employment termination report regarding a resignation or termination that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date and that law is continued in effect for that purpose." Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.

(a) A report or statement 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 subsection, a commission member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the commission employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by the commission that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code. § 1701.454 (repealed 2005). Upon review, we find the F-5 reports created prior to the effective date of the amendment of section 1701.454 are not subject to release under the provisions of former section 1701.454. Therefore, the commission must withhold these F-5 reports under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the current section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. The current 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 Chapter 552, Government Code, 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. You seek to withhold the remaining information under section 1701.454. In this instance, one of the F-5 forms indicates the named officer may have been terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Accordingly, we must rule conditionally. If the officer at issue was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, then the commission must withhold the F-5 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. If, however, the officer at issue was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, the F-5 form we have marked may not be withheld under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The remaining F-5 forms indicate the officer at issue did not resign and was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, and these must be withheld 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 the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate public concern. *Id.* at 682. 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.). Accordingly, if the F-5 form we have marked is not confidential under section 1701.454 of the Occupations Code, the commission must withhold the individual's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

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.² *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). The F-5 form we have marked contains information pertaining to a peace officer that the commission does not hold in an employment capacity. Accordingly, to the extent the F-5 form we have marked is not confidential under section 1701.454 of the Occupations Code, then the commission must withhold the information we have marked under section 552.1175 if the individual at issue is a currently-licensed peace officer and elects to restrict access to

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

this information in accordance with section 552.1175(b) of the Government Code. However, the commission may not withhold this information under section 552.1175 of the Government Code if the individual either is not a currently-licensed peace officer or does not elect to restrict access to this information in accordance with section 552.1175(b).

In summary, the officer's commission number is not subject to the Act and need not be released to the requestor. The commission must withhold the F-5 reports created prior to the effective date of the amendment of section 1701.454 under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code. If the officer at issue was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, then the commission must withhold the F-5 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The commission must withhold the remaining F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. If the F-5 form we have marked is not confidential under section 1701.454 of the Occupations Code, the commission must (1) withhold the individual's date of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a currently-licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code; and (3) 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/eb

Ref: ID# 759371

Enc. Submitted documents

c: Requestor
(w/o enclosures)