



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 23, 2019

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

OR2019-26524

Dear Mr. Beachamp:

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# 787447 (ORR# 07 12 2019).

The Texas Commission on Law Enforcement (the "commission") received a request for information pertaining to specified categories of information that relate to F-5 forms and the Montgomery County Sheriff's Office. The commission claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted 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. This section encompasses 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. 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. Section 1701.4525 of the Occupations Code also reads, in part, as follows:

(a) A person who is the subject of an employment termination report maintained by the commission under this subchapter may contest information contained in the report by submitting to the law enforcement agency and to the commission a written petition on a form prescribed by the commission for a correction of the report not later than the 30th day after the date the person receives a copy of the report. On receipt of the petition, the commission shall refer the petition to the State Office of Administrative Hearings [“SOAH”].

...

(e) In a proceeding to contest information in an employment termination report for a report based on alleged misconduct, an administrative law judge shall determine if the alleged misconduct occurred by a preponderance of the evidence regardless of whether the person who is the subject of the report was terminated or the person resigned, retired, or separated in lieu of termination. If the alleged misconduct is not supported by a preponderance of the evidence, the administrative law judge shall order the commission to change the report[.]

Id. § 1701.4525(a), (e); *see also* 37 T.A.C. § 217.8 (contesting employment termination report). Upon review, we find section 1701.454 is applicable to the submitted Separation of Licensee (F-5) Report forms and a Petition to Correct Separation of Licensee Report form, which were submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. However, we note one of the F-5 forms indicates the officer at issue 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. The commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code if the officers whose information is at issue were not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. However, the commission may not withhold this information on that ground if the officers were terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We find the commission has not established the remaining information is confidential under section 1701.454 and may not withhold any of it under section 552.101 on that ground.

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 concern. *Id.* at 682. 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.). Thus, the commission must withhold the submitted dates 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.¹ *See* Gov't Code § 552.1175. The commission must withhold the information we have marked under section 552.1175 if the individuals at issue are licensed peace officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The commission may not withhold this information under section 552.1175 if the individuals either are not currently licensed peace officers or do not elect to restrict access to this information in accordance with section 552.1175(b).

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 address at issue does not appear to be of a type specifically excluded by section 552.137(c), and the commission does not inform us a member of the public has affirmatively consented to its release. Therefore, the commission must withhold the e-mail address we have marked under section 552.137 of the Government Code.

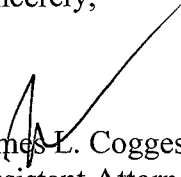
In summary, the commission must withhold the following: (1) the information we have marked under to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code if the officers whose information is at issue were not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses; (2) the submitted dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the information we have marked under section 552.1175 of the Government Code if the individuals at issue are licensed peace officers and elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code; and (4) the e-mail address we have marked under section 552.137 of the Government Code. The commission must release the remaining information.

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 787447

Enc. Submitted documents

c: Requestor
(w/o enclosures)