



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2019

Mr. David S. Fulton
Assistant Criminal District Attorney
Randall County
2309 Russell Long Boulevard, Suite 120
Canyon, Texas 79015

OR2019-31849

Dear Mr. Fulton:

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# 796511.

The Randall County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named individual's arrest and the named individual's employment records. You state you have released some information. You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1175 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially, you state the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number, and logins and passwords used by sheriff's office employees to access law enforcement records. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced,

¹ Although you raise section 552.021 of the Government Code, we note this section is not an exception to disclosure. Rather, this provision provides that public information is available during normal business hours. See Gov't Code § 552.021.

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 an officer's TCOLE 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 TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor. Further, you state the logins and passwords are used only to access records and have no significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find this information does not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the logins and passwords you indicated are 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." *Id.* § 552.101. Section 552.101 encompasses former section 1701.454 of the Occupations Code. We note 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 form at issue is governed by the previous version of section 1701.454. *See id.* Former section 1701.454 provides as follows:

(a) A report or statement submitted to [TCOLE] 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 [TCOLE] 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 [TCOLE] 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 [TCOLE] 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 note the officer at issue appears to have been terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses. Accordingly, we must rule conditionally. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the former section 1701.454 of the Occupations Code if the officer was not terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses. However, the sheriff's office may not withhold this information on that ground if the officer was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses.

Section 552.101 of the Government Code also encompasses former section 1701.306 of the Occupations Code. Former section 1701.306 makes confidential L-2 Declaration of Medical Condition forms required by TCOLE. Former section 1701.306 provides, in part:

(a) [TCOLE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

...

(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 physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer 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.

Act of May 17, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2219 (current version at Occ. Code §§ 1701.306(a), (b)). The submitted L-2 form was created prior to September 1, 2011. Although section 1701.306 of the Occupations Code was amended in 2011 by the 82nd Legislature, an L-2 declaration form created prior to September 1, 2011 is subject to the former version of section 1701.306, which was continued in effect for that purpose. *See* Act of May 30, 2011, 82nd Leg., R.S., ch. 1224, § 7. Therefore, the sheriff's office must withhold the submitted L-2 declaration form, which we marked, under section 552.101 in conjunction with former section 1701.306.

Section 552.101 of the Government Code also encompasses information protected by section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the submitted fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff’s office must withhold fingerprints we marked under section 552.101 in conjunction with section 560.003.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code. This section encompasses information protected by other statutes, such as laws that make CHRI confidential. CHRI generated by the National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See id.* § 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 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. However, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in criminal justice system). We also note the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find you failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the sheriff's office may not withhold the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which provides in pertinent 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.

Occ. Code § 159.002(a)-(c). 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 (1987), 370 (1983), 343 (1982). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004. Upon review, we find none of the remaining information constitutes confidential medical records for the purposes of the MPA; thus, the sheriff's office may not withhold the remaining information under section 552.101 on this basis.

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.”² Gov’t Code § 552.102(a). The Texas Supreme Court 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 the sheriff’s office must withhold the date of birth we marked under section 552.102(a).³

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. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, this office has noted 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 (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), 329 (1982) (reasons for employee’s resignation ordinarily not private). The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *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 dates of birth belonging to individuals who have been deidentified are not protected as the deidentified individuals’ privacy interests are protected.

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the sheriff’s office must withhold the information we marked and all identifiable public citizens’ dates of birth under section 552.101 in conjunction with common-law privacy. However, we find you have

² The 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).

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the sheriff's office may not withhold the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You seek to withhold some of the remaining information pursuant to section 552.108(b)(1). You claim release of firearm serial numbers would interfere with law enforcement. However, upon review, we find the sheriff's office has failed to demonstrate release of the remaining information would interfere with law enforcement and crime prevention. The sheriff's office may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code 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.⁴ Gov't Code § 552.117(a)(2). The sheriff's office must withhold the information we 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. If the employee is not currently a licensed peace officer as defined by article

⁴ "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

2.12, then the sheriff's office may not withhold this information under section 552.117(a)(2).

Nevertheless, if the employee is not a currently licensed peace officer, then the information at issue may be 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 id.* § 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). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, the sheriff's office must withhold the information we marked under section 552.117(a)(1) of the Government Code if the employee at issue timely elected to withhold that information. The sheriff's office may not withhold this information under section 552.117(a)(1) if the employee did not timely elect to withhold it.⁵

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. 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). Upon review, we find a portion of the remaining information pertains to peace officers and is not held by the sheriff's office in an employment capacity. Accordingly, to the extent the information we marked pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code. If the individuals whose information we marked are no longer licensed peace officers or no election is made, the sheriff's office may not withhold this information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We conclude the sheriff's office must withhold the information we marked under section 552.130.

⁵ Regardless of the applicability of section 552.117, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the sheriff’s office must withhold the insurance policy number and the bank account and routing number we marked under section 552.136 of the Government Code.

In summary, the TCOLE identification number and login and passwords you indicated are not subject to the Act and need not be released to the requestor. The sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with the former section 1701.454 of the Occupations Code if the officer was not terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses. The sheriff’s office must withhold the submitted L-2 declaration form, which we marked, under section 552.101 in conjunction with former section 1701.306 of the Occupations Code. The sheriff’s office must withhold fingerprints we marked under section 552.101 in conjunction with section 560.003 of the Government Code. The sheriff’s office must withhold the date of birth we marked under section 552.102(a) of the Government Code. The sheriff’s office must withhold the information we marked and all identifiable public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff’s office must withhold information we 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 of the Code of Criminal Procedure. To the extent the employee at issue is not a currently licensed peace officer as defined by article 2.12, the sheriff’s office must withhold the information we marked under section 552.117(a)(1) of the Government Code if he timely elected to withhold that information. To the extent the information we marked pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), the sheriff’s office must withhold the information we marked under section 552.1175 of the Government Code. The sheriff’s office must withhold the information we marked under section 552.130 of the Government Code. The sheriff’s office must withhold the insurance policy number and the bank account and routing number we marked under section 552.136 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.

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,

A handwritten signature in cursive script that reads "D. Michelle Case". The signature is written in black ink and includes a long horizontal flourish at the end.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 796511

Enc. Submitted documents

c: Requestor
(w/o enclosures)