



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Ms. Amy Bass-Domel
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2019-36294

Dear Ms. Bass-Domel:

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# 802960.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for records pertaining to the employment of a named former sheriff's office employee. You state the sheriff's office will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.137, 552.140, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as the following:

¹ Open Records Letter No. 2016-21706 authorized the sheriff's office to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

² Although you also raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception to raise for information the sheriff's office holds in its capacity as employer.

[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 TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officers' TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the officers' TCOLE numbers 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." Gov't Code § 552.101. Section 552.101 encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information 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 subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code. § 1701.454. The remaining information contains F-5 Reports of Separation of Licensee. The information at issue does not indicate the officer at issue resigned or 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 F-5 reports you marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.³

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 and L-3 Declaration of Psychological and Emotional Health 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:

(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 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, (current version at Occ. Code §§ 1701.306(a), (b)). The submitted L-2 and L-3 forms were 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 and L-3 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

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

office must withhold the L-2 and L-3 declaration forms you marked under section 552.101 in conjunction with former section 1701.306 of the Occupations Code.⁴

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). We note the fingerprints at issue belong to the requestor’s spouse. Accordingly, if the requestor is acting as the authorized representative of her spouse, she has a right of access to the fingerprints at issue, which you marked, under section 560.002(1)(A) of the Government Code. However, if the requestor is not acting as her spouse’s authorized representative, she does not have a right of access to the marked fingerprints, and the sheriff’s office must withhold them 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 information protected by chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). 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 laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F, or subchapter E-1 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; 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 obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. *See id.* § 411.082(2)(B). We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. Upon review, we agree information you marked consists of CHRI that is confidential under section 411.083. Thus, the sheriff’s office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.⁵

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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.”⁶ *Id.* § 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). Accordingly, the sheriff’s office must generally withhold the former employee’s date of birth 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 *Industrial Foundation*. *Id.* at 683.

This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in the *Ellen* decision contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating the public’s interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held “the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.” *Id.* Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, along with the statement of the accused. However, the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of victims and witnesses must still be redacted from the statements. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. We also note supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

⁶ The 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).

Some of the remaining information relates to an investigation into an alleged sexual harassment. Upon review, we find the information at issue contains an adequate summary of the investigation of alleged sexual harassment and also contains the statement of the accused. The summary and statement of the accused are not confidential under section 552.101 in conjunction with common-law privacy; however, information within the summary and statement that identifies victims and witnesses must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. *See Ellen*, 840 S.W.2d at 525. Therefore, pursuant to section 552.101 in conjunction with common-law privacy and the holding in *Ellen*, the sheriff's office must withhold the identifying information of the victims and witnesses, which we marked, within the summary and the statement of the accused. Because there is an adequate summary, the sheriff's office must also withhold the remaining information in the sexual harassment investigation, which we marked, under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. Further, upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must generally withhold the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the sheriff's office has not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, 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 sections 552.024 and 552.1175 of the Government Code. *See 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. We note section 552.117(a)(2) is applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision Nos. 670 at 6 (2001) (Gov't Code* § 552.117(a)(2) excepts from disclosure peace officer's cellular telephone number if officer pays for service), 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). If the individuals at issue are currently licensed peace officers as defined by article 2.12, the sheriff's office must generally withhold the information you marked under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service.

If the individuals are not currently licensed peace officers, section 552.117(a)(1) of the Government Code may apply to the information at issue. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept

confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or 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. As previously noted, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506. Accordingly, to the extent the individuals whose information is at issue are not currently-licensed peace officers, but timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must generally withhold the information you marked under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service.

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. Gov't Code § 552.130. Accordingly, the sheriff's office must generally withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

However, we note some of the information that is subject to section 552.101 of the Government Code in conjunction with common-law privacy and sections 552.102, 552.117, and 552.130 of the Government Code pertains to the requestor's spouse. We note common-law privacy and sections 552.102, 552.117, and 552.130 protect personal privacy. Accordingly, if the requestor is acting as the authorized representative of her spouse, she has a right of access to information pertaining to her spouse that would ordinarily be withheld to protect the spouse's privacy interests. *See id.* § 552.023(a)-(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information is considered confidential under privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, to the extent the requestor is acting as the authorized representative of her spouse, the information pertaining to the requestor's spouse may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.102 of the Government Code, section 552.117(a)(2) of the Government Code, section 552.117(a)(1) of the Government Code, or section 552.130 of the Government Code.

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* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the

general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). In *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.), the court concluded section 552.137 does not except from disclosure the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *See Austin Bulldog*, 490 S.W.2d at 250. Accordingly, except for the e-mail address we marked for release, the sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. However, we find you have failed to demonstrate the e-mail address we marked for release is excepted under section 552.137 of the Government Code, and it may not be withheld on that basis.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See Gov't Code* § 552.140(a), (b). You do not inform us, and we are unable to determine, when the sheriff's office first came into possession of the submitted DD-214 form. Therefore, we must rule conditionally. If the sheriff's office came into possession of the form on or after September 1, 2003, then the sheriff's office must withhold the submitted DD-214 form under section 552.140 of the Government Code. If the sheriff's office received the form before September 1, 2003, then the sheriff's office may not withhold the form pursuant to section 552.140 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 [required public disclosure] 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.

Id. § 552.152. You seek to withhold the identity of an undercover officer. You represent the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officer within the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officer you marked under section 552.152 of the Government Code.

In summary, the officers' TCOLE numbers are not subject to the Act and need not be released to the requestor. The sheriff's office must withhold the F-5 reports you marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the

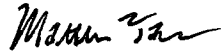
Occupations Code. The sheriff's office must withhold the submitted L-2 and L-3 declaration forms you marked under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code. If the requestor is not acting as her spouse's authorized representative, the sheriff's office must withhold the fingerprints you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff's office must generally withhold the former employee's date of birth under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we marked within the sexual harassment investigation under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. The sheriff's office must generally withhold the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must generally withhold the information you marked under section 552.117(a)(2) of the Government Code if the individuals at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. To the extent the individuals at issue are not currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure but they timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must generally withhold the information at issue under section 552.117(a)(1) of the Government Code. The sheriff's office must generally withhold the motor vehicle record information you marked under section 552.130 of the Government Code. However, to the extent the requestor is acting as the authorized representative of her spouse, the information pertaining to the requestor's spouse may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.102 of the Government Code, section 552.117(a)(2) of the Government Code, section 552.117(a)(1) of the Government Code, or section 552.130 of the Government Code. Except for the e-mail address we marked for release, the sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. If the sheriff's office came into possession of the form on or after September 1, 2003, then the sheriff's office must withhold the submitted DD-214 form under section 552.140 of the Government Code. The sheriff's office must withhold the identifying information of the undercover officer you 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.

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 black ink, appearing to read "Matthew Taylor".

Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/eb

Ref: ID# 802960

Enc. Submitted documents

c: Requestor
(w/o enclosures)