



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 27, 2020

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

OR2020-02391

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# 808240 (TCOLE ID# 10 31 2019).

The Texas Commission on Law Enforcement (the "commission") received a request for (1) information pertaining to certain complaints against the Harris County Sheriff's Office (the "sheriff's office"); (2) personnel records for a named officer; (3) licenses revocations, suspension, or reprimands for all sheriff's officers; (4) F-5 reports, petition to correct separation documents, decisions and orders documents; and (5) all permanently surrendered licenses during a specified period of time. You state you have released some information. 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 representative sample of information.<sup>1</sup>

Initially, we note the submitted information includes officers' commission identification numbers. Section 552.002(a) of the Government Code defines "public information" as the following:

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

[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 officers' commission identification numbers are unique computer-generated numbers assigned to peace officers for identification in commission's electronic database and may be used as an access device number on the commission website. Thus, we find the officers' commission numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the officers' commission 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. 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 some of the submitted Separation of Licensee (F-5) Report forms, a Petition to Correct Separation of License Report form, and an administrative law judge’s Decision and Order, which were submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. Therefore, the commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, we note one of the F-5 forms and the related Petition to Correct Separation of Licensee Report form 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. To the extent the officer whose information is at issue was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, the commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, to the extent the officer at issue was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, the commission may not withhold this information 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 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.<sup>2</sup> *See* Gov't Code § 552.1175. The commission must withhold the information we marked under section 552.1175 if the individual at issue is a licensed peace officer and elects 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 individual either is not currently a licensed peace officer or does 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). Therefore, the commission must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the officers' commission numbers are not subject to the Act and need not be released to the requestor. The commission must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. If the officer whose information is at issue was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, the commission must also withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. If the officer was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, the commission must (1) withhold the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we marked under section 552.1175 of the Government Code if the individual at issue is a licensed peace officer and elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code; (3) withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure; and (4) 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.

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<sup>2</sup> 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 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 that reads "D. Michelle Case". The signature is written in a cursive style with a long horizontal flourish at the end.

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/be

Ref: ID# 808240

Enc. Submitted documents

c: Requestor  
(w/o enclosures)