



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2020

Mr. Andrew Wipke
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-07080

Dear Mr. Wipke:

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# 815091.

Fort Bend County (the "county") received a request for information pertaining to a named former employee.¹ You state the county has released some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.114, 552.117, 552.130, 552.136 and 552.147 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹ We note the county asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² Although you raise section 552.026 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. Gov't Code § 552.026.

- (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 officers' TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.

Next, we note you redacted portions of the responsive information. You state the county has redacted information under section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code.³ Further, we understand you have redacted information under sections 552.130(c) and 552.136 of the Government Code.⁴ However,

³ Section 552.117 of the Government Code exempts 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. *See* Gov't Code § 552.117. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

⁴ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, access device numbers subject to section 552.136(b). *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor).

we note you have also redacted additional information, including a date of birth. Pursuant to section 552.301, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Therefore, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the county should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

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 information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the county must withhold it under section 552.101 of the Government Code.⁵

Section 552.101 of the Government Code also encompasses former section 1701.454 of the Occupations Code. We note the submitted information includes F-5 forms 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. 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

⁵ As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

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 find the information at issue is not subject to release under the provisions of former section 1701.454. Thus, the county must withhold the information we marked under section 552.101 in conjunction with former section 1701.454. However, you failed to demonstrate the remaining information you marked is subject to former section 1701.454, and it may not be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also 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 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. Upon review, we find you have failed to demonstrate any of the remaining information at issue was submitted to TCOLE under subchapter J of chapter 1701, and the county may not withhold it under section 552.101 of the Government Code on that basis.

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, 1999 Tex. Gen. Laws 1431, 2219 (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 county must withhold the submitted L-2 and L-3 declaration forms, which we have 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 county must withhold fingerprints you 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 the information we marked consists of CHRI the county must withhold under section 552.101 in conjunction with section 411.083 and federal law. However, we find you failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the county 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 county 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."⁶ 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 county must withhold the date of birth we indicated under section 552.102(a).⁷

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). 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 (1987)

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).

⁷ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(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).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the county must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the county may not withhold the remaining information at issue under section 552.101 in conjunction with common-law privacy.

Section 552.107(1) of the Government Code protects information subject to the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information you marked constitutes a communication between a county attorney and county employees that was made for the purpose of facilitating the rendition of professional legal services to the county. You also state the communication was intended to be confidential and has remained confidential. Based on your representations and our review, we find the county may withhold the information you marked under section 552.107(1) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d at 327 (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You generally assert the release of the submitted radio number would interfere with law enforcement. Upon review, we find you have failed to demonstrate the release of the information at issue would interfere with law enforcement or prosecution efforts. Accordingly, the county may not withhold the submitted radio number under section 552.108(b)(1) of the Government Code.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel

matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995).

You generally assert the information you marked is subject to section 552.111 of the Government Code. Upon review, we find you have failed to establish the information at issue constitutes advice, opinions, recommendations, or other material reflecting the policymaking processes of the authority. Accordingly, the county may not withhold the information you marked under section 552.111 of the Government Code.

Section 552.114(a) of the Government Code exempts from disclosure student records "at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office has determined the same analysis applies under section 552.114 and the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds. We note section 552.114 and FERPA apply only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. See 34 C.F.R. § 99.33(a)(2). You contend some of the remaining information is confidential under section 552.114. However, the county is not an educational institution. See Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an "educational agency" for purposes of FERPA). Further, we have no indication the county received the information at issue directly from an educational institution. Therefore, we conclude the county may not withhold the information you marked on the basis of section 552.114 of the Government Code.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and exempts from public disclosure a peace officer's home address and telephone number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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. To the extent the individual at issue is currently a licensed peace officer as defined by article 2.12, the county must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(2) of the Government Code. Conversely, if the individual at issue is not a currently licensed peace officer, the county may not withhold the information you have marked or the information we have marked under section 552.117(a)(2).

If the individual is not a currently licensed peace officer, section 552.117(a)(1) of the Government Code may apply to the information at issue. As discussed above, the county has redacted information subject to section 552.117 of the Government Code pursuant to Open Records Decision No. 670. However, we note the remaining information includes information subject to section 552.117. Section 552.117(a)(1) of the Government Code exempts 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. *See* Gov't Code § 552.117(a); Open Records Decision No. 622 (1994). 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 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. We have marked the personal information of a former county employee. If the employee whose personal information is at issue timely elected to keep his information confidential pursuant to section 552.024, the county must withhold the information you marked and the additional information we marked under section 552.117(a)(1) of the Government Code. The county may not withhold this information under section 552.117(a)(1) if the employee did not timely elect to keep his information confidential pursuant to section 552.024.¹

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. Gov't Code § 552.130(a). Upon review, we find the badge numbers you marked do not consist of motor vehicle record information subject to section 552.130, and this information may not be withheld on that basis. Except for the submitted badge numbers, the county must withhold the motor vehicle record information you marked and the additional motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of this chapter, 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." Gov't Code § 552.136(b). Upon review, we find the county has failed to demonstrate the badge numbers it has marked under section 552.136 consist of access device numbers used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, the county has failed to demonstrate the applicability of section 552.136 to the submitted badge numbers, and the county may not withhold them from release on that basis.

Section 552.139 of the Government Code provides, in pertinent part, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. *Id.* § 552.139(b)(3). Therefore, the county must withhold the copy of the identification card, which we marked, under section 552.139(b)(3).

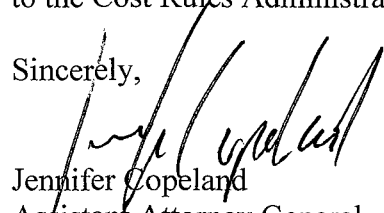
¹ If the employee did not make a timely confidentiality election under section 552.024, we note section 552.147(b) of the Government Code permits a governmental body to withhold a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

In summary, the peace officers' TCOLE identification numbers in the submitted information is not subject to the Act, and the county is not required to release this information in response to the request for information. The county must withhold the following: (1) the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code; (3) the L-2 and L-3 forms we have marked under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code; (4) the fingerprints you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (5) the CHRI we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (6) the date of birth we indicated under section 552.102(a) of the Government Code; and (7) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The county may withhold the information you marked under section 552.107(1) of the Government Code. To the extent the individual at issue is currently a licensed peace officer as defined by article 2.12, the county must withhold the information you marked, as well as the additional information we marked, under section 552.117(a)(2) of the Government Code. If the individual is not currently a licensed peace officer but made a timely election under section 552.024 of the Government Code, the county must withhold the information you marked, as well as the additional information we marked, under section 552.117(a)(1) of the Government Code. Except for the submitted badge numbers, the county must withhold the motor vehicle record information you marked and the additional motor vehicle record information we marked under section 552.130 of the Government Code. The county must withhold the information we marked under section 552.139(b)(3) of the Government Code. The county 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 815091

Enc. Submitted documents

c: Requestor
(w/o enclosures)