



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 3, 2020

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2020-10240

Dear Ms. Lentz:

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# 819936.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident involving a named sheriff's office employee. You state the sheriff's office will withhold dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal

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<sup>1</sup> Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

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 ch. 411 subch. F. 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 F, or subchapter E-1, of the Government Code. *See* Gov’t Code § 411.083. 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411. We note, however, active warrant information or other information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for purposes of section 552.101. *See id.* § 411.081(b). We also note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find you have not demonstrated any of the information at issue consists of confidential CHRI. Therefore, the sheriff’s office may not withhold any portion of the information you marked under section 552.101 of the Government Code on that 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.”<sup>2</sup> *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). Upon review, we find the sheriff’s office must withhold the date of birth we marked under section 552.102(a) of the Government Code.

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 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Upon review, we find

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<sup>2</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

some of the remaining information may be subject to section 552.117(a)(2). Accordingly, if the information at issue pertains to individuals who are currently licensed peace officers as defined by article 2.12, then, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked under section 552.117(a)(2) of the Government Code. Conversely, to the extent the information at issue pertains to individuals who are not currently licensed peace officers as defined by article 2.12, the information may not be withheld under section 552.117(a)(2) of the Government Code. In either event, we find you failed to demonstrate the applicability of section 552.117(a)(2) to the information we marked for release, and it may not be withheld on that basis.

If the information at issue pertains to individuals who are not currently licensed peace officers, then the information 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. Therefore, if the individuals whose information is at issue are not currently licensed peace officers as defined by article 2.12, but timely requested confidentiality under section 552.024 of the Government Code, then, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals whose information is at issue are not currently licensed peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the sheriff's office may not withhold the information under section 552.117(a)(1). However, we find you failed to demonstrate the applicability of section 552.117(a)(1) to the information we marked for release, and it may not be withheld on that basis.

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 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, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit

history), 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). Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code excepts from disclosure 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 agree some of the remaining information consists of personal information of an individual who may be a peace officer that is not held by the sheriff's office in an employment context. Thus, to the extent the information you marked and the additional information we marked relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. If the individual whose information is at issue is not currently a licensed peace officer or does not elect to restrict access to his information in accordance with section 552.1175(b), the sheriff's office may not withhold the marked information under section 552.1175.

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. *See id.* § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

In summary, the sheriff's office must withhold the date of birth we marked under section 552.102(a) of the Government Code. If the information at issue pertains to individuals who are currently licensed peace officers as defined by article 2.12, then, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked under section 552.117(a)(2) of the Government Code. If the individuals whose information is at issue are not currently licensed peace officers as defined by article 2.12, but timely requested confidentiality under section 552.024 of the Government Code, then, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked under section 552.117(a)(1) 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 common-law privacy. To the extent the information at issue relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the sheriff's office must withhold the

information you marked and the additional information we marked under section 552.1175 of the Government Code. The sheriff's office must withhold the motor vehicle record information you marked under section 552.130 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,

Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/mo

Ref: ID# 819936

Enc. Submitted documents

c: Requestor  
(w/o enclosures)