



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Mr. James M. Stainton
County Attorney
Wise County
Wise County Courthouse, Suite 300
Decatur, Texas 76234

OR2020-12663

Dear Mr. Stainton:

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# 830393.

Wise County (the "county") received a request for information relating to a named former county employee.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² Further, the county states it notified the named former county employee of the request and his right to submit arguments to this office as to why the submitted information should not be released.³ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

¹ As you did not submit the requestor's written request for information, we take our description from your brief to this office.

² Although you do not explicitly raise section 552.101 of the Government Code, we understand you to raise this exception based on the substance of your argument. We note the county did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* § 552.007, .302, .352.

³ As of the date of this letter, we have not received comments from the named former employee explaining why any portion of the submitted information should 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 Texas Commission on Law Enforcement (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. You assert the submitted information is confidential under section 1701.454 of the Occupations Code. Upon review, we find you have failed to demonstrate any of the information at issue was submitted to the commission 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 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code.⁴ 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. The information we marked consists of the personal information of an individual who was employed by the county and the information is held in the employment context. In this instance, however, it is unclear whether the individual whose information is at issue is a currently-licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individual whose information is at issue is a currently-licensed peace officer as defined by article 2.12, the county must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual whose information is at issue is not a currently-licensed peace officer as defined by article 2.12, the information we marked may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual whose information is at issue is not a currently-licensed peace officer, then the information we marked may be subject to section 552.117(a)(1) of the Government

⁴The 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).

Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that 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 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the county may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual whose information is at issue is not a currently-licensed peace officer, but timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the county may not withhold the information we marked under section 552.117(a)(1).

In summary, to the extent the individual whose information is at issue is a currently-licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the county must withhold the information we marked under section 552.117(a)(2) of the Government Code. To the extent the individual whose information is at issue is not a currently-licensed peace officer, but timely requested confidentiality under section 552.024 of the Government Code, the county must withhold the information we marked under section 552.117(a)(1) 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,

Paige Thompson
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)