



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2020

Deputy Danie Huffman
Public Information Officer
Parker County Sheriff's Office
129 Hogle Street
Weatherford, Texas 76086

OR2020-12732

Dear Deputy Huffman:

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# 826210 (Reference Nos. OR20-191 & OR20-262).

The Parker County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information pertaining to a named peace officer, training records for correctional officers, and the state inspection report for specified time periods.¹ You state you do not have information responsive to portions of the request.² We understand you will withhold certain information pursuant to section 552.130(c) and section 552.147(b) of the Government Code.³ You claim the submitted information is excepted from disclosure

¹ You state the sheriff's office sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a).

² The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

³ Section 552.130(c) 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 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous

under sections 552.101, 552.102, 552.108, 552.140, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

Initially, we note the sheriff's office has not submitted the background information or state inspection reports. To the extent any the background information and the state inspection reports existed on the date the sheriff's office received the request, we assume the sheriff's office has released it. If the sheriff's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the sheriff's office asserts a portion of the requestor's second request is redundant and repetitious of the first request. Generally, section 552.232 of the Government Code outlines the procedures a governmental body must follow in responding to a repetitious or redundant request from the same requestor. Gov't Code § 552.232. In this instance, the sheriff's office does not inform us it has furnished copies of the requested information to the requestor or made copies available to the requestor. Accordingly, the sheriff's office failed to establish the request at issue is a repetitious or redundant request for purposes of the Act. Thus, the sheriff's office may not respond to the request as contemplated by section 552.232 of the Government Code. Thus, we will address the sheriff's office's arguments against release of this information as well as against release of the remaining information.

Next, we note the submitted information contains Texas Commission on Law Enforcement (the "commission") 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) 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

determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684.

⁴ 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 those records contain substantially different types of information than that submitted to this office.

(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.

Id. § 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. You state a commission identification number is a unique computer-generated number assigned to licensees for identification in the commission's electronic database and may be used as an access device number on the commission website. Accordingly, we find the commission identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code, and the sheriff's office need not release it.

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 exception encompasses section 1701.306 of the Occupations Code, which applies to L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms. L-2 and L-3 forms are required by the Texas Commission on Law Enforcement (the "commission").⁵ Section 1701.306 provides the following:

(a) The commission may not issue a license to a person 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 blood test or other medical test.

(b) An agency hiring a person for whom a license 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 the commission. A declaration is not public information.

⁵ The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. See Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

Occ. Code § 1701.306(a)-(b). Therefore, the sheriff's office must withhold the submitted L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses former section 1701.454 of the Occupations Code. The submitted information includes F-5 forms that were 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, 4096.⁶ Former section 1701.454 provides as follows:

(a) A report or statement 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 subsection, a commission 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 commission 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 the commission 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 F-5 reports created prior to the effective date of the amendment of section 1701.454 are not subject to release under the provisions of former section 1701.454. Therefore, the sheriff's office must withhold the submitted F-5 reports under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code.

⁶ Section 6 of the amending legislation states "[t]he changes in law made by this Act in relation to employment termination reports apply only to an employment termination report under Subchapter J, Chapter 1701, Occupations Code, regarding a resignation or termination that occurs on or after the effective date of this Act. An employment termination report regarding a resignation or termination that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date and that law is continued in effect for that purpose." Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.

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. We find you failed to demonstrate any part of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the sheriff's office may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 437.232 of the Government Code, which provides as follows:

(a) In this section, "military personnel information" means a service member's name, home address, rank, official title, pay rate or grade, state active duty orders, deployment locations, military duty addresses, awards and decorations, length of military service, and medical records.

(b) A service member's military personnel information is confidential and not subject to disclosure under Chapter 552.

Gov't Code § 437.232. Section 437.232 is contained in subchapter E of chapter 437 of the Government Code. Chapter 437 is titled "Texas Military" and subchapter E is titled "Texas Military Forces." Upon review, we find section 437.232 only applies to military personnel records maintained by the Texas Military Forces. *See id.* § 437.001(14) (providing "Texas military forces" for purposes of chapter 437 mean the Texas National Guard, the Texas State Guard, and any other military forces under state law). We note the information the sheriff's office seeks to withhold is contained in communications maintained by the sheriff's office. Thus, section 437.232 is not applicable to the information at issue, and the sheriff's office may not withhold that information under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code.

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." *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 withhold the employees' dates of birth it marked under section 552.102(a) of the Government Code. Having carefully reviewed the information at issue, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the sheriff's office may not withhold any of the remaining information on that basis.

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 also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, the sheriff's office must withhold the information we 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 the cellular telephone service is not paid for by a governmental body. Upon review, however, we find the remaining information the sheriff's office marked does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former employee of the sheriff's office, and the sheriff's office may not withhold the remaining information it marked under section 552.117(a)(1).

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.

The sheriff's office seeks to withhold some of the remaining information under section 552.152 of the Government Code. Section 552.152 provides:

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.

Gov't Code § 552.152. The sheriff's office represents 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 it marked under section 552.152 of the Government Code. Upon review, we find the sheriff's office has not demonstrated the release of any of the remaining information would subject an employee of the sheriff's office to a substantial threat of physical harm. Thus, the sheriff's office may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the commission identification number in the submitted information is not subject to the Act and the sheriff's office is not required to release it. The sheriff's office must withhold the submitted L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The sheriff's office must withhold the submitted F-5 reports under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code. The sheriff's office must withhold the employees' dates of birth it marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information it 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 the cellular telephone service is not paid for by a governmental body. 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 it marked under section 552.152 of the Government Code. The remaining information must be released.

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,

Pearlie Gault
Attorney
Open Records Division

PG/eb

Ref: ID# 826210

Enc. Submitted documents

c: Requestor
(w/o enclosures)