



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2020

Ms. Audrea Hutson and Ms. Amy Bass-Domel
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2020-18675

Dear Ms. Hutson and Ms. Bass-Domel:

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# 837171.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for background investigations and disciplinary actions pertaining to two named deputies. Additionally, the sheriff's office received two requests from different requestors for those two named deputies' personnel files. You state you will redact certain dates of birth pursuant to Open Records Letter No. 2016-21706 (2016).¹ You claim some of the submitted information is not subject to the Act. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.122, 552.130, 552.136, 552.137, and 552.147 of the Government Code.² You also state you notified the Bastrop County Sheriff's Office ("BCSO") and the Ingleside Police Department ("IPD") of the request for information and of the 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 submitted arguments and reviewed the submitted information.

¹ Open Records Letter No. 2016-21706 authorizes the sheriff's office 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.

² Although you do not raise section 552.130 of the Government Code in your brief, we understand the sheriff's office to assert this exception based on your markings.

³ As of the date of this letter, we have not received any comments from BCSO or IPD explaining why any portion of the submitted information should not be released to the requestor.

Initially, you state some of the information responsive to the second request was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2020-13912 (2020). In that ruling, we determined 1) with the exception of basic information, which must be released, and the information we indicated, the sheriff's office may withhold the submitted information under section 552.108(a)(2) of the Government Code, and 2) in releasing the basic information, the sheriff's office must withhold the marked information under section 552.152 of the Government Code. You state the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the sheriff's office may continue to rely on Open Records Letter No. 2020-13912 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note some of the submitted information is not responsive to the first request because it does not consist of the background investigations or disciplinary actions requested by the first requestor. This ruling does not address the public availability of the non-responsive information, which we have marked, and the sheriff's office need not release it to the first requestor in response to this request.

You state the submitted information includes officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as the following:

[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 an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. Thus, we find the officers' TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the officers' TCOLE 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." *Id.* § 552.101. Section 552.101 encompasses the confidentiality provisions found in chapter 55 of the Code of Criminal Procedure. Articles 55.01 through 55.05 of the Code of Criminal Procedure provide for the expunction of criminal records in certain limited circumstances. Article 55.03 prescribes the effect of an expunction order and provides as follows:

When the order of expunction is final:

- (1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Crim. Proc. Code art. 55.03. Article 55.04 imposes sanctions for violations of an expunction order and provides, in part, the following:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Id. art. 55.04, § 1. This office has determined records subject to an expunction order are not subject to public disclosure under the Act. *See* Open Records Decision No. 457 at 2 (1987) (governmental body prohibited from releasing or disseminating arrest records subject to expunction order, as "those records are not subject to public disclosure under the [Act]"). You state some of the responsive information is the subject of an expunction order and have submitted a copy of that order. Upon review, we agree the sheriff's office must withhold some of the information you have marked under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure.

However, we find the sheriff's office has failed to establish any of the remaining information at issue, which we have marked for release, is subject to the order of expunction at issue. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for purposes of title 3 of Family Code). We note section 58.008(b) applies only to law enforcement records that involve a juvenile as a suspect, offender, or defendant. The sheriff's office asserts some of the remaining information is subject to section 58.008(b). However, the sheriff's office has failed to demonstrate any portion of the information at issue depicts an individual who is ten years of age or older and under the age of seventeen as a suspect or offender of delinquent conduct or conduct indicating a need for supervision. Further, we find some of the information at issue consists of administrative records that do not constitute juvenile law enforcement records for purposes of section 58.008(b). Therefore, the sheriff's office may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

Section 552.101 of the Government Code also encompasses article 62.005(b) of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Texas Department of Public Safety ("DPS") sex offender registration database: the person's full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of

fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the department. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number; driver's license number; home, work, or cellular telephone number; the identification of any online identifier established or used by the person; all information required by the DPS outside of the enumerated categories of information including any information regarding an employer's name, address, or telephone number; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, pursuant to section 552.101 of the Government Code, the sheriff's office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which you have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find the information we have marked was used in an investigation of alleged child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201 of Family Code). You do not indicate the sheriff's office has adopted any rules that would permit the release of the information at issue. Accordingly, we find the information at issue is subject to chapter 261 of the Family Code. Therefore, we conclude the information we have marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.⁴ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

⁴ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.101 of the Government Code also encompasses 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 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 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). You assert section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for some of the remaining. Upon review, we find the information we have marked consists of CHRI which the sheriff’s office must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.⁵ However, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the sheriff’s office may not withhold any portion of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by DPS concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides, in relevant part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual’s name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as

⁵ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the [Act].

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a)-(b). The information we have marked consists of handgun license information obtained from DPS. In this instance, the requestor is neither the license holder nor a criminal justice agency. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.⁶

Section 552.101 of the Government Code also encompasses 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 biometric identifiers 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 sheriff’s office must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which pertains to L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. Section 1701.306 provides the following:

(a) [TCOLE] 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)

⁶ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Upon review, we find the sheriff's office must withhold the L-2 you have marked 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 section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement ("TCOLE") under subchapter J of chapter 1701 of the Occupations Code.⁷ Section 1701.454 provides as follows:

(a) All information submitted to the [TCOLE] 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 [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The sheriff's office seeks to withhold a portion of the remaining information under section 1701.454. We note section 1701.454 is applicable only to information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. *See id.* § 1701.454(a). Upon review, we find the sheriff's office has failed to demonstrate the applicability of section 1701.454 of the Occupations Code to any of the information at issue, and the sheriff's office may not withhold it under section 552.101 of the Government Code on this basis. *See Open Records Decision No. 649 at 3 (1996)* (language of confidentiality provision controls scope of its protection).

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." 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 sheriff's office must withhold the employees' dates of birth you have marked and the employee's date of birth we have marked under section 552.102(a) of the Government Code.⁸

⁷ 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.*

⁸ 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).*

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. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 455 at 9 (1987) (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions 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), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). This office has also held common-law privacy protects the identity of a juvenile offender. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b).

We note some of the information at issue pertains to individuals who have been de-identified and whose privacy interests are, thus, protected. Upon review, we conclude some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, we find the sheriff's office must withhold all identified public citizens' dates of birth, the information you have marked, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁹

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987), 372 (1983). Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as

⁹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information relating to the case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information. We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). We note you seek to withhold reports from the Austin Police Department (“APD”) under section 552.108(a)(2) of the Government Code. In this instance, however, you have not provided our office with any representation to indicate APD wishes to have the information at issue withheld. Further, you state some of the information at issue relates to a closed investigation that did not result in conviction or deferred adjudication. However, we note the information at issue pertains solely to an internal investigation conducted by the sheriff’s office and is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) of the Government Code to any of the information at issue, and the sheriff’s office may not withhold any of the information at issue on that basis.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov’t Code § 552.117(a)(2). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we find with the exception of the information we have marked for release, the sheriff’s office must withhold the information you have marked and the information we have marked under section 552.117(a)(2) of the Government Code; however, the sheriff’s office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. In addition, we conclude section 552.117(a)(2) of the Government Code is not applicable to the remaining information, and the sheriff’s office may not withhold it on that ground.

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. 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). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-7. We note a post office box number is not a “home address” for purposes of section 552.1175 and, therefore, may not be withheld on that ground. *See* Open Records

Decision No. 622 at 6 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). Thus, with the exception of the information we have marked for release, to the extent the information you have marked relates to licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services. If the individuals whose information is at issue are not currently licensed peace officers or do not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175. In addition, we conclude section 552.1175 of the Government Code is not applicable to the remaining information, and the sheriff's office may not withhold it on that ground.

Section 552.122(b) of the Government Code excepts from disclosure a test item developed by a licensing agency or governmental body. Gov't Code § 552.122(b). The term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 9 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *See id.* at 6. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold some of the remaining information under section 552.122 of the Government Code. Upon review, however, we conclude the sheriff's office has not established the information at issue tests an individual's or group's knowledge or ability in a particular area. *See* ORD 626 at 9. Therefore, the sheriff's office may not withhold any of the information at issue under section 552.122(b) of the Government Code.

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* Gov't Code § 552.130. Upon review, we find some of the remaining information consists of motor vehicle record information subject to section 552.130. Therefore, with the exception of the information we have marked for release, the sheriff's office must withhold motor vehicle record information you have marked and the motor vehicle record information we have marked under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the sheriff's office may not withhold any of the remaining information at issue under section 552.130 of the Government Code.

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).

Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). The e-mail address we have marked for release is subject to section 552.137(c). Thus, the sheriff's office may not withhold the e-mail address we have marked for release under section 552.137. The remaining e-mail addresses you marked are not one of the types specifically excluded by section 552.137(c). Accordingly, with the exception of the e-mail address we marked for release, the sheriff's office must withhold the remaining e-mail addresses you marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their release.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. Upon review, we agree the sheriff's office may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, the sheriff's office may continue to rely on Open Records Letter No. 2020-13912 as a previous determination and withhold or release the information at issue in accordance with that ruling. The officers' TCOLE numbers are not subject to the Act and need not be released to the requestors. With the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked under section 552.101 of the Government Code in conjunction with article 55.03 of the Code of Criminal Procedure. Pursuant to section 552.101 of the Government Code, the sheriff's office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which you have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The sheriff's office must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. The sheriff's office must withhold the L-2 you have marked 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 employees' dates of birth you have marked and the employee's date of birth we have marked under section 552.102(a) of the Government Code. With the exception of the information we have marked for release, we find the sheriff's office must withhold all identified public citizens' dates of birth, the information you have marked, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked and the information we have marked under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. With the exception of the information we have marked for release, to the extent the information we have

marked relates to licensed peace officers who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone numbers may only be withheld under section 552.1175 if a governmental body does not pay for the cellular services. The sheriff's office must withhold the motor vehicle record information you have marked and the motor vehicle record information we have marked under section 552.130 of the Government Code. With the exception of the e-mail address we marked for release, the sheriff's office must withhold the remaining e-mail addresses you marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their release. The sheriff's office may withhold the social security numbers you have marked under section 552.147 of the Government Code. The sheriff's office must release the remaining responsive 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/jm

Ref: ID# 837171

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

2 Third Parties
(w/o enclosures)