



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

September 24, 2020

Mr. Cary D. Kirby  
County Attorney  
Angelina County Attorney's Office  
P.O. Box 1845  
Lufkin, Texas 75902-1845

OR2020-24079

Dear Mr. Kirby:

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# 846304.

The Angelina County Sheriff's Office (the "sheriff's office") received a request for pages 51 through 100 of a named individual's personnel file. You state you have released some information. You claim some of the submitted information is not subject to the Act. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. 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

(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 officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestor.<sup>1</sup>

Section 552.101 of the Government Code exempts from disclosure "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 chapter 411 of the Government Code. 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." Gov't Code § 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

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

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 sheriff's office must withhold under section 552.101 in conjunction with section 411.083 and federal law.<sup>2</sup> However, we find you failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the sheriff's office may not withhold the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes. Section 1701.306 makes confidential L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. 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.

Occ. Code § 1701.306(a)-(b). Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>3</sup> However, we find you have failed to demonstrate the remaining information at issue is confidential under section 1701.306 of the Occupations Code. Thus, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup> As our ruling is dispositive, we need not address your remaining argument disclosure of this information.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

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

Occ. Code. § 1701.454. You state the remaining information contains documents submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code. The information at issue does not indicate the individual at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, you have failed to demonstrate the remaining information at issue was submitted to TCOLE under subchapter J of chapter 1701. Thus, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations 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). Upon review, we find the sheriff's office must withhold the date of birth you marked under section 552.102(a) of the Government Code.<sup>4</sup>

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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>4</sup> As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You assert release of the firearm serial numbers you marked would interfere with law enforcement because it could be used on an illegal firearm or in a missing weapons report. Upon review, we agree release of the information you marked would interfere with law enforcement. Accordingly, the sheriff's office may withhold the firearm serial numbers you marked under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees or officials 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 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 or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. You provided documentation showing the employee whose information is at issue timely elected to keep confidential his home address, telephone number, social security number, emergency contact information, and whether he has family members. Accordingly, the sheriff's office

must withhold the information you marked, in addition to the information we marked, under section 552.117(a)(1) of the Government Code.<sup>5</sup>

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 a personal identification document issued by an agency of this state or another state or county is excepted from public release. *See Gov't Code § 552.130(a)*. Upon review, we find some of the remaining information consists of motor vehicle record information that is subject to section 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code.<sup>6</sup>

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." Transp. Code § 730.004. "Personal information" means "information that identifies a number, name, address (but not zip code), telephone number, or medical and disability information. *Id.* § 730.003(6). DPS is an "agency" for purposes of chapter 730. *See id.* § 730.003(1) ("agency" is state agency that compiles or maintains motor vehicle records). You state some of the remaining information consists of records that were obtained by the sheriff's office from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, the remaining information at issue is not confidential under section 730.004 or 730.013 of the Transportation Code, and the sheriff's office may not withhold any portion of it under section 552.101 of the Government Code on that basis.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff's office must withhold the information we 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 information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The sheriff's office must withhold the date of birth you marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office may withhold the firearm serial numbers you marked under section 552.108(b)(1) of the Government Code. The sheriff's office must

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<sup>5</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>6</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

withhold the information you marked, in addition to the information we marked, under section 552.117(a)(1) of the Government Code. The sheriff's office must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation 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,

Melanie Villars  
Assistant Attorney General  
Open Records Division

MJV/be

Ref: ID# 846304

Enc. Submitted documents

c: Requestor  
(w/o enclosures)