



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 29, 2020

Mr. Andrew Wipke
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2020-27204

Dear Mr. Wipke:

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# 850893.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for the personnel file a named employee. You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.108, 552.114, 552.117, 552.1175, 552.130, 552.136, 552.139, 552.140, 552.147, and 552.152 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, you state the submitted information includes an officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as the following:

¹ Although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. Further, although you raise section 552.026 of the Government Code, this section is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. *See id.* § 552.026.

[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 the 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 officer's TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's TCOLE number is not subject to the Act and need not be released to the requestor.

Next, we note you redacted portions of the remaining information. You state the sheriff's office has redacted certain information under sections 552.117(a)(1) and 552.117(a)(2) of the Government Code pursuant to section 552.024(c) of the Government Code and Open Records Decision No. 670 (2001), respectively.² Further, you state the sheriff's office has redacted information pursuant to sections 552.1175(f), 552.130(c), 552.136(c), and

² As previously noted, section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information subject to section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

552.147(b) of the Government Code.³ However, we note you have also redacted additional information, including dates of birth. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or has statutory authorization to withhold the information without requesting a decision under the Act. *See* Gov't Code § 552.301(a), (e)(1)(D). Our review of our records does not indicate the sheriff's office is authorized to withhold this information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). Therefore, this type of information must be submitted in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. In this instance, we can discern the nature of some of the redacted information, including the dates of birth at issue; thus, being deprived of this information does not inhibit our ability to make a ruling, and we will address whether this information is subject to disclosure under the Act. Nevertheless, be advised that a failure to provide this office with the requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"). However, we are unable to discern the nature of the remaining redacted information. Thus, the sheriff's office has failed to comply with section 552.301 of the Government Code as to this information, and this information is presumed public under section 552.302 of the Government Code. Therefore, the sheriff's office must release the remaining redacted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or

³ Section 552.1175(f) of the Government Code authorizes a governmental body to redact information subject to section 552.1175(b) of the Government Code without the necessity of requesting a decision from this office under the Act, if the individual properly elects to keep such information confidential. *See* Gov't Code § 552.1175(b), (f). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redact such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, access device numbers subject to section 552.136(b). *See id.* § 552.136(c); *see also id.* § 552.136(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general and governmental body withholding information pursuant to section 552.136(c) must provide certain notice to requestor). 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).

other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that 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(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 obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find a portion of the submitted information, which we marked, consists of CHRI that is confidential under section 411.083. Thus, 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. However, we find the sheriff’s office has not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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.

Id. § 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 that “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 you seek to withhold is maintained in documents 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 it under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code.

Section 552.101 of the Government Code also encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. *See* Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). Accordingly, the sheriff's office must withhold the ST-3 accident report we marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.⁴

Section 552.101 of the Government Code also encompasses former section 1701.306 of the Occupations Code, which provides:

(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.

Act of May 17, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2219 (current version at Occ. Code § 1701.306(a), (b)). The submitted L-2 and L-3 declaration forms were created prior to September 1, 2011. Although section 1701.306 of the Occupations Code was amended in 2011 by the 82nd Legislature, L-2 and L-3 declaration forms created prior to September 1, 2011, are subject to the former version of section 1701.306, which was continued in effect for that purpose. *See* Act of May 30, 2011, 82nd

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

Leg., R.S., ch. 1224, § 7. Upon review, we find the sheriff's office must withhold the L-2 and L-3 declaration forms we marked under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code. However, upon review, we find none of the remaining information consists of L-2 or L-3 forms. Accordingly, section 1701.306 of the Occupations Code does not apply to the remaining information, and the sheriff's office may not withhold it 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." Gov't Code § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. Section 552.101 of the Government Code 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). In *Hubert v. Harte Hanks Texas Newspapers, Inc.*, 652 S.W. 2d 546, 549 51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Accordingly, the sheriff's office must withhold the public employees' dates of birth under section 552.102(a) of the Government Code.⁵ However, upon review, 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 it on that basis.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body.

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

In re Tex. Farmers Ins. Exch., 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information at issue consists of communications involving attorneys for the sheriff’s office and sheriff’s office employees in their capacities as clients. You state these communications were made in furtherance of the rendition of professional legal services to the sheriff’s office. You state these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the sheriff’s office may withhold the information you marked under section 552.107(1) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency maintained for internal use in matters relating to law enforcement or prosecution if “release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). A governmental body that seeks to withhold information under section 552.108(b)(1) must explain how and why the release of the information would interfere with law enforcement and crime prevention. *See id.* § 552.301(e)(1)(A); *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws); Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989). This office has concluded that section 552.108(b) 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), 508 (1988) (release of dates of prison transfer could impair security), 413 (1984) (release of sketch showing security measures to be used during execution would unduly interfere with law enforcement). In Open Records Decision No. 506 (1988), this office determined that the statutory predecessor to section 552.108(b) excepted from disclosure “cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities.” ORD 506 at 2. We noted that the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

The sheriff’s office states the information at issue consists of cellular telephone numbers of “individuals that are involved with or engaged in criminal investigations and undercover operations.” The sheriff’s office asserts the release of this information would interfere with law enforcement. Based on these representations and our review, we conclude the sheriff’s office may withhold the information you marked under section 552.108(b)(1) of the Government Code.

Section 552.114(a) of the Government Code excepts from disclosure student records “at an educational institution funded wholly or partly by state revenue.” Gov’t Code § 552.114(a). This office has determined the same analysis applies under section 552.114 and the Family Educational Rights and Privacy Act of 1974 (“FERPA”), section 1232g of title 20 of the United States Code. FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds. We note section 552.114 and FERPA apply only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. *See* 34 C.F.R. § 99.33(a)(2). You contend some of the submitted information is confidential under section 552.114 and FERPA. However, the sheriff’s office is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an “educational agency” for purposes of FERPA). Further, we have no indication the sheriff’s office received the transcript at issue directly from an educational institution. Therefore, we conclude the sheriff’s office may not withhold the officer’s transcript on the basis of section 552.114 of the Government Code or FERPA.

As previously noted, you state the sheriff’s office is redacting certain information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code and Open Records Decision No. 670. However, we note some additional information within the remaining information may be subject to section 552.117. 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. Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* ORD

506 at 5-6 (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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. It is unclear whether the sheriff's office employees whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, with the exception of the information we marked for release, to the extent the information you marked and redacted and the additional information we marked under section 552.117(a)(2) pertains to employees that are currently licensed peace officers as defined by article 2.12, the sheriff's office must withhold such information under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the cellular telephone numbers at issue if the cellular telephone service was not paid for by a governmental body.⁶ Conversely, if the employees are not currently licensed peace officers, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. However, no portion of the remaining information consists of a home address or telephone number, social security number, emergency contact information, or family member information pertaining to a current or former sheriff's office employee and may not be withheld under section 552.117(a)(2) of the Government Code.

Section 552.117(a)(1) of the Government Code 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 or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). As noted above, 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* ORD 506 at 5-6. Additionally, as previously noted, section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. 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. Accordingly, with the exception of the information we marked for release, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information you marked and redacted and the information we marked under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the cellular telephone numbers at issue if the cellular telephone service was not paid for by a governmental body. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the sheriff's office may not

⁶ In that instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

withhold the information at issue under section 552.117(a)(1). As noted above, no portion of the remaining information at issue consists of a home address or telephone number, social security number, emergency contact information, or family member information pertaining to a current or former sheriff's office employee. Therefore, no portion of the remaining information may be withheld under section 552.117 of the Government Code.

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. We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Some of the remaining information relates to individuals who may be licensed peace officers employed by other governmental bodies. As we are unable to determine from the information provided if the individuals at issue are currently licensed peace officers, we must rule conditionally. Accordingly, to the extent it relates to individuals who are currently licensed peace officers and who elect to restrict access to the information in accordance with section 552.1175(b), the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service.⁷ Conversely, if the individuals whose information is at issue are not currently licensed as peace officers or do not elect to restrict access to their information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

As previously noted, you state the sheriff's office is redacting motor vehicle record information pursuant to section 552.130(c) 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 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 note the remaining information contains additional motor vehicle record information 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.

As previously noted, you state the sheriff's office is redacting certain information pursuant to section 552.136(c) of the Government Code. Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find you have demonstrated some of the remaining information consists of access device numbers for purposes of section 552.136.

⁷ As our ruling is dispositive, we need not address your arguments against disclosure of this information.

Accordingly, with the exception of the information we marked for release, the sheriff's office must withhold the information you redacted under section 552.136 of the Government Code. However, we find you have failed to demonstrate the information we marked for release consists of access device numbers for purposes of section 552.136, and the sheriff's office may not withhold any of the remaining information under section 552.136 of the Government Code.

Section 552.139 of the Government code provides, in part, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. *Id.* § 552.139(b)(3). Therefore, the sheriff's office must withhold the copy of the identification cards issued to an employee of a governmental body, which we marked, under section 552.139 of the Government Code.⁸

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 id.* § 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. In either instance, we find you failed to demonstrate the information we marked for release is subject to section 552.140. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.140 of the Government Code.

Section 552.152 of the Government Code 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.

Id. § 552.152. The sheriff's office represents the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, except for the information we marked for release, the sheriff's office must withhold the identifying information of the undercover officers you

⁸ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

marked under section 552.152 of the Government Code. However, we find you failed to demonstrate the release of the remaining information you marked would subject an employee or officer to a substantial risk of physical harm. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.152 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which is subject to the two-prong test discussed above. *Indus. Found.*, 540 S.W.2d at 685. 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). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 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). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note records relating to routine traffic violations are not considered criminal history information. *Cf. Gov't Code* § 411.082(2)(B). However, criminal history information provided by a sheriff's office officer as part of an application for employment with the sheriff's office was not compiled by any governmental body. Furthermore, when an officer's criminal history information is compiled in the course of the officer's pre-employment screening, there is a legitimate public interest in the information. Additionally, we 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 (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1992), 470 at 4 (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).

Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, except for the information we marked for release, the sheriff's office must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have

not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the sheriff's office may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the submitted 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 ST-3 accident report we marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The sheriff's office must withhold the L-2 and L-3 declaration forms we marked under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code. The sheriff's office must withhold the public employees' dates of birth under section 552.102(a) of the Government Code. The sheriff's office may withhold the information you marked under section 552.107(1) of the Government Code. The sheriff's office may withhold the information you marked under section 552.108(b)(1) of the Government Code. With the exception of the information we marked for release, to the extent the information the sheriff's office marked and redacted and the additional information we marked under section 552.117(a)(2) of the Government Code pertains to employees that are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the sheriff's office must withhold such information under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the cellular telephone numbers at issue if the cellular telephone service was not paid for by a governmental body. With the exception of the information we marked for release, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information you marked and redacted and the information we marked under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the cellular telephone numbers at issue if the cellular telephone service was not paid for by a governmental body. To the extent it relates to individuals who are currently licensed peace officers and who elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code, the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the motor vehicle record information you marked and we marked under section 552.130 of the Government Code. With the exception of the information we marked for release, the sheriff's office must withhold the information you redacted under section 552.136 of the Government Code. The sheriff's office must withhold the information we marked under section 552.139 of the Government Code. 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. Except for the information we marked for release, the sheriff's office must withhold the identifying information of the undercover officers you marked under section 552.152 of the Government Code. Except for the information we marked for release, the sheriff's

office must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/gw

Ref: ID# 850893

Enc. Submitted documents

c: Requestor
(w/o enclosures)