



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2020

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 78626

OR2020-27340

Dear Ms. Lentz:

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# 851087.

The Williamson County Sheriff's Office (the "sheriff's office") received two requests from different requestors for specified information pertaining to the first requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.122, 552.130, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note 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:

[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:

¹ Although you also raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the sheriff's office holds in its capacity as an employer.

(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.

Additionally, we note some of the remaining information, which you marked, is not responsive to the present request because it does not pertain to the first requestor. This ruling does not address the public availability of the non-responsive information you marked, and the sheriff's office need not release it in response to this request.²

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 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 the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

² As we are able to make this determination, we need not address your argument against disclosure of this information.

Occ. Code § 1701.454. The submitted information includes information that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the officer 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 you marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.³

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

Id. § 1701.306(a)-(b). Upon review, we find the sheriff's office must withhold the L-2 and L-3 forms you marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.⁴

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). Section 560.002 of the Government Code provides, however, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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

. . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Thus, the first requestor has a right of access to his fingerprints under section 560.002(1)(A). Therefore, the authority must release the fingerprints to this requestor pursuant to section 560.002 of the Government Code. However, there is no indication the second requestor has a right of access to the fingerprints at issue under section 560.002. Accordingly, the sheriff’s office must withhold the fingerprints you marked from the second requestor 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 411.192 of the Government Code, which governs the release of information maintained by the Texas Department of Public Safety (“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 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 marked consists of concealed handgun license information obtained from DPS. We note the first requestor is the license holder. Therefore, except for the requestor’s name, date of birth, gender, race, and zip code, which the sheriff’s office must release pursuant to section 411.192(b) of the Government Code, the sheriff’s office must withhold the remaining concealed handgun license information from the first requestor under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code. Additionally, we note the second requestor is neither the license holder nor a criminal justice agency. Thus, the sheriff’s office must withhold the information we marked from the second requestor under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.⁵

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as 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.*

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

§ 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 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 the information you marked. Upon review, we find the information we 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.⁶ However, we find you have failed to demonstrate the remaining responsive information at issue consists of confidential CHRI. Therefore, the sheriff's office may not withhold any portion of the remaining responsive information at issue under section 552.101 of the Government Code on this 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." *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). We note the first requestor has a right of access to his date of birth, and the city may not withhold it from him under section 552.102. *See* Gov't Code § 552.023(a) ("a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, the sheriff's office must withhold the employee's date of birth from the second requestor under section 552.102 of the Government Code.⁷

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

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

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). 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. 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), 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). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). However, we note the first requestor has a right of access to his own personal information. *See* Gov't Code § 552.023(a); ORD 481 at 4.

Upon review, we find the information you marked, and the additional information we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the first requestor's information, which must be released to the first requestor, the sheriff's office must withhold the marked information, and all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy.⁸

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, 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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 protects personal privacy, and the first requestor is the individual whose information is at issue. Thus, the first requestor has a right of access to his information pursuant to section 552.023 of the Government Code, and the sheriff's office may not withhold such information under section 552.117 of the Government Code. *See* Gov't Code § 552.023; ORD 481 at 4. In this instance,

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

however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12. If the individual at issue is currently a licensed peace officer as defined by article 2.12, then the sheriff's office must withhold from the second requestor the information you marked, and the additional information we marked, under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. Conversely, if the individual at issue is not currently a licensed police officer as defined by article 2.12, the information at issue may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual at issue is not currently a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). As noted above, the first requestor has a right of access to his information pursuant to section 552.023 of the Government Code, and the sheriff's office may not withhold such information under section 552.117 of the Government Code. *See* Gov't Code § 552.023; ORD 481 at 4. The sheriff's office may only withhold the information at issue from the second requestor under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individual at issue made a timely election under section 552.024, the sheriff's office must withhold from the second requestor the information you marked, and the additional information we marked, under section 552.117(a)(1) 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. Conversely, if the individual at issue did not make a timely election under section 552.024, their information may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.122 excepts from disclosure “[a] test item developed by a . . . governmental body[.]” Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined 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.” ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *See* Open Records Decision No. 118 (1976). *See generally* ORD 626 at 4-5. 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). Upon review, we find you failed to demonstrate the information you marked

constitutes a test item or reveals test questions. Thus, the sheriff's office may not withhold the information at issue on the basis of 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(a). We note section 552.130 protects personal privacy. Accordingly, the first requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. However, the sheriff's office must withhold from the second requestor the motor vehicle record information you marked, and the additional information we marked, under section 552.130 of the Government Code.⁹

Section 552.136(b) of the Government Code states “[n]otwithstanding 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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). However, we find you have not demonstrated any of the remaining information consists of a credit card, debit card, or charge card number, or is an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 of the Government Code to the remaining responsive information and the sheriff's office may not withhold it on this ground.

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). We note one of the e-mail addresses, which we marked, is specifically excluded by section 552.137(c). We further note the first requestor has a right of access to his own e-mail address pursuant to section 552.137(b) of the Government Code. *See id.* § 552.137(b). With the exception of the first requestor's e-mail address, which must be released to the first requestor, and the e-mail address we marked, the sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See id.* § 552.137(b). However, we find the remaining information at issue does not consist of an e-mail address for purposes of section 552.137. Therefore, the sheriff's office may not withhold any of the remaining information at issue under section 552.137 of the Government Code.

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

In summary, the sheriff's office must withhold the information you 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 L-2 and L-3 forms you 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 fingerprints you marked from the second requestor under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. Except for the requestor's name, date of birth, gender, race, and zip code, which the sheriff's office must release pursuant to section 411.192(b) of the Government Code, the sheriff's office must withhold the remaining concealed handgun license information from the first requestor under section 552.101 of the Government Code in conjunction with section 411.192(a) of the Government Code. The sheriff's office must withhold the information we marked from the second requestor 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 information we marked 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 employee's date of birth from the second requestor under section 552.102 of the Government Code. With the exception of the first requestor's information, which must be released to the first requestor, the sheriff's office must withhold the marked information, and all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual at issue is currently a licensed peace officer as defined by article 2.12, then the sheriff's office must withhold from the second requestor the information you marked, and the information we marked, under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. If the individual at issue is not currently a licensed peace officer, and the individual at issue made a timely election under section 552.024, the sheriff's office must withhold from the second requestor the information you marked, and the information we marked, under section 552.117(a)(1) 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. The sheriff's office must withhold from the second requestor the motor vehicle record information you marked, and the additional information we marked, under section 552.130 of the Government Code. With the exception of the first requestor's e-mail address, which must be released to the first requestor, and the e-mail address we marked, the sheriff's office must withhold the personal e-mail addresses you marked under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. 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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jm

Ref: ID# 851087

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)