



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 5, 2020

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

OR2020-27838

Dear Ms. Bass-Domel:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 852438.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named deputy. You state you will redact dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).¹ 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, 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.152 of the Government Code. We have considered your arguments 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;

¹ Open Records Letter No. 2016-21706 authorized the sheriff's office to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general's decision. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code.

(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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses article 62.005(b) of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Texas Department of Public Safety ("DPS") sex offender registration database: the person's full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the department. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number; driver's license number; home, work, or cellular telephone number; the identification of any online

identifier established or used by the person; all information required by the DPS outside of the enumerated categories of information including any information regarding an employer's name, address, or telephone number; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, pursuant to section 552.101 of the Government Code, the sheriff's office must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which you have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure.

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

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

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

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

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

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

²As our ruling is dispositive, we do not address your remaining arguments to withhold this information.

under section 552.101 of the Government Code in conjunction with section 58.008 of the Family Code.

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

(a) The commission may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

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

Section 552.101 of the Government Code also encompasses section 801.353 of the Occupations Code, which provides, in relevant part, the following:

(a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian's client.

(b) A veterinarian may not be required to release information concerning the veterinarian's care of an animal, except on the veterinarian's receipt of:

(1) a written authorization or other form of waiver executed by the client; or

(2) an appropriate court order or subpoena.

Id. § 801.353(a), (b). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* You state the information you marked consists of veterinary records of a veterinarian of Williamson

County. We note the sheriff's office is the owner of the animal at issue. *See id.* § 801.351(a)(1) (defining "client" as "owner or other caretaker of the animal"). Although you state the requestor has not produced an appropriate court order or subpoena to release the information at issue, we note the sheriff's office, as the caretaker of the animal that agreed to follow the veterinarian's instructions when the veterinary records at issue were created, has the discretion to release the information at issue pursuant to section 801.353(b)(1). If the sheriff's office does not elect to exercise this discretion, we agree the sheriff's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code.

Section 552.101 of the Government Code also encompasses information made confidential by chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find the information you marked consists of a mental health record that is subject to chapter 611 of the Health and Safety Code. Accordingly, the sheriff's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.³

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." 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. ORD 565 at 7; *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential

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

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 in conjunction with chapter 411, subchapter F, of the Government Code. We further note Federal Bureau of Investigation ("FBI") numbers constitute CHRI generated by the FBI. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes confidential CHRI the sheriff's office must withhold under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.⁴ However, we find the department has not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the department 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 560.003 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *See id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the sheriff's office must withhold the fingerprints you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). 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.

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*

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

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). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

Upon review, we conclude portions of the remaining information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, with the exception of the information we have marked for release, the sheriff's office must withhold the information you marked in addition to the information we have marked under section 552.117(a)(2) 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 services.⁵ Upon review, we find you have failed to demonstrate the remaining information is subject to section 552.117(a)(2). Accordingly, no portion of the remaining information may be withheld under section 552.117(a)(2) of the Government Code.

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

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-7. Thus, to the extent the information you marked relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. If the individual whose information is at issue is not currently a licensed peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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 id.* § 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 we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website 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 provided by a vendor or vendor's agent who seeks to contract with a governmental body, or a e-mail contained in a response to a request for bids or proposals. *See id.* § 552.137(c). The e-mail address we have marked for release is subject to section 552.137(c). Thus, the sheriff's office may not withhold the e-mail address we have marked for release under section 552.137. The remaining e-mail addresses you marked are not one of the types specifically excluded by section 552.137(c). Accordingly, with the exception of the e-mail address we have marked for release, the sheriff's office must withhold the remaining e-mail addresses you marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their release.

Section 552.152 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, the sheriff's office must withhold the identifying information of the undercover officers, which you marked, under section 552.152 of the Government Code.

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 or release the information subject to article 62.005 of the Code of Criminal Procedure, which you have marked, in accordance with article 62.005(b) of the Code of Criminal Procedure. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The sheriff's office must withhold the L-2 and L-3 declaration 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 has the discretion to release the information you marked pursuant to section 801.353(b)(1) of the Occupations Code; however, if the sheriff's office does not elect to exercise this discretion, then the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with section 801.353 of the Occupations Code. The sheriff's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff's office must withhold the fingerprints you marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the date of birth you marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the sheriff's office must withhold the information you marked in addition to the information we have marked under section 552.117(a)(2) 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 services. If the information you marked relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. The sheriff's office must withhold the information you marked and we have marked under section 552.130 of the Government Code. Except for the e-mail address we have marked for release, the city must withhold the remaining e-mail addresses you marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their release. The sheriff's office must withhold the identifying information of the undercover officers,

which you marked, under section 552.152 of the Government Code. 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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

Ref: ID# 852438

Enc. Submitted documents

c: Requestor
(w/o enclosures)