



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2022

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2022-00530

Dear Mr. Beauchamp:

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# 923044 (10132021G.,S.).

The Texas Commission on Law Enforcement ("TCOLE") received twenty requests from the same requestor for information pertaining to twenty named individuals. You state TCOLE has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information contains peace officers' TCOLE identification numbers. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the officers' TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses former section 1701.454 of the Occupations Code. We note the remaining information includes F-5 forms created prior to the effective date of the amendment of section 1701.454 by the Seventy-ninth Legislature. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 4. Thus, the F-5 forms at issue are governed by the previous version of section 1701.454. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6.¹ Former section 1701.454 provides as follows:

(a) A report or statement submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act] unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subsection, a [TCOLE] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the [TCOLE] employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by [TCOLE] that

¹ Section 6 of the amending legislation states "[t]he changes in law made by this Act in relation to employment termination reports apply only to an employment termination report under Subchapter J, Chapter 1701, Occupations Code, regarding a resignation or termination that occurs on or after the effective date of this Act. An employment termination report regarding a resignation or termination that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date and that law is continued in effect for that purpose." Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6.

includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454 (repealed 2005). Upon review, we find the F-5 forms created prior to the effective date of the amendment of section 1701.454 are not subject to release under the provisions of former section 1701.454. Therefore, TCOLE must withhold the F-5 forms created prior to the effective date of the amendment of section 1701.454 under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code.

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

- (a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.
- (b) Except as provided by this subchapter, a [TCOLE] member or other person may not release information submitted under this subchapter.

Id. § 1701.454. Upon review, we find the F-5 reports created after the effective date of the amendment of section 1701.454 do not indicate the named officers resigned or were terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, TCOLE must withhold the remaining F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. We note you also seek to withhold a T-1 form (Telecommunicator Appointment/Separation) under section 1701.454. This section is applicable only to the records encompassed by subchapter J of chapter 1701 of the Occupations Code, however, and does not make a T-1 form confidential. *See id.* § 1701.451 *et seq.*; *see also* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Therefore, we conclude TCOLE may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations 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.² Gov't Code § 552.1175. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Thus, to the extent the information we marked pertains to a current or honorably retired peace officer who elects to restrict access to his information in

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

accordance with section 552.1175(b) of the Government Code, TCOLE must withhold the information we marked under section 552.1175 of the Government Code. If the individual whose information is at issue is no longer a current or honorably retired peace officer or no election is made, TCOLE may not withhold this information under section 552.1175 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 id.* § 552.130. Accordingly, TCOLE must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor. TCOLE must withhold the F-5 forms created prior to the effective date of the amendment of section 1701.454 under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code. TCOLE must withhold the remaining F-5 forms under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. To the extent the information we marked pertains to a current or honorably retired peace officer who elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code, TCOLE must withhold the information we marked under section 552.1175 of the Government Code. TCOLE must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. TCOLE 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)