



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 13, 2022

Ms. Amy Bass-Domel
Open Records
Williamson County Sheriff's Office
508 South Rock Street
Georgetown, Texas 787626

OR2022-01252

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# 925101.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for four categories of information pertaining to a former employee. You state the sheriff's office will redact dates of birth pursuant to Open Records Letter No. 2016-21706 (2016).¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:

¹ Open Records Letter No. 2016-21706 is a previous determination issued to the sheriff's office authorizing it to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without seeking a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301 (a) of the Government Code).

(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 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 552.102(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). Accordingly, the sheriff's office must withhold the employee's date of birth you marked under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas 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 established. *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). Further, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *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), 545 (1990) (deferred compensation information, participation in

voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 455 at 9 (1987) (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). 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 the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion 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 the basis of common-law privacy.

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. Accordingly, the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.²

Section 552.117(a)(11) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, as well as information that reveals whether the individual has family members. *See* Gov't Code § 552.117(a)(11). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c) (providing "family member" has meaning assigned by Fin. Code § 31.006(d)). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone services are not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by a governmental body and intended for official use). We note some of the remaining information pertains to an individual who is subject to section 552.117(a)(11) of the Government Code. Accordingly, the sheriff's office must withhold the information we marked under section 552.117(a)(11) of the Government Code; however, the cellular telephone number may only be withheld if a governmental body does not pay for the cellular telephone service.³ However, none of the

² As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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

remaining information is subject to section 552.117(a)(11) and it may not be withheld on that 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 current or honorably retired peace officer, as well as information that reveals whether the current or honorably retired peace officer has family members, regardless of whether the current or honorably retired peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2); *id.* §552.003(1-b) (defining "honorably retired" for purposes of the Act). As previously noted, section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* ORD 506 at 5-7. In this instance we are unable to determine whether the individuals whose information is at issue are currently-licensed or honorably retired peace officers; therefore, we must rule conditionally. If the individuals at issue are currently-licensed or honorably retired peace officers and the cellular telephone service is not paid for by a governmental body, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individuals at issue are not currently-licensed or honorably retired peace officers, the sheriff's office may not withhold the information at issue under section 552.117(a)(2) of the Government Code. Further, we find you failed to demonstrate the remaining information at issue is subject to section 552.117(a)(2). Thus, no portion of the remaining information may be withheld under section 552.117(a)(2).

If the individuals at issue are not currently-licensed or honorably retired peace officers, their information at issue may be subject to section 552.117(a)(1) 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). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c). 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). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the sheriff's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the employees at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the sheriff's office may not withhold the information at issue under section 552.117(a)(1). Further, we find you failed to demonstrate the remaining information at issue is subject to section 552.117(a)(1). Thus, no portion of the remaining responsive information may be withheld under section 552.117(a)(1).

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. *See* 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[.]” *See id.* § 552.1175(a)(1); *see also id.* § 552.003(1-b). We note section 552.1175 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* ORD 506 at 5-7. Accordingly, to the extent the information we marked relates to individuals subject to section 552.1175 of the Government Code who elect to restrict access to their 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, to the extent the phone numbers at issue are cellular telephone numbers, they may only be withheld if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals whose information is at issue are not subject to section 552.1175, do not elect to restrict access to their information in accordance with section 552.1175(b), or a governmental body pays for the cellular telephone service, the marked information may not be withheld under section 552.1175. In either instance, we find you have failed to demonstrate any of the remaining information at issue is subject to section 552.1175, and the sheriff's office may not withhold any of the remaining information on that basis.

Section 552.136 of the Government Code provides, “[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”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the sheriff's office must withhold the information you marked under section 552.136 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* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the sheriff's office must withhold the e-mail addresses you marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The sheriff's office must withhold the employee's date of birth you marked under section 552.102(a) of the Government Code. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. The sheriff's office must withhold the information we marked under section 552.117(a)(11) of the Government Code; however, the cellular telephone number may only

be withheld if a governmental body does not pay for the cellular telephone service. If the individuals at issue are currently-licensed or honorably retired peace officers and the cellular telephone service is not paid for by a governmental body, the sheriff's office must withhold the information we marked under section 552.117(a)(2) of the Government Code. If the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the sheriff's office must withhold the information we marked under section 552.117(a)(1) of the Government Code. To the extent the information we marked relates to individuals subject to section 552.1175 of the Government Code who elect to restrict access to their 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, to the extent the phone numbers at issue are cellular telephone numbers, they may only be withheld if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the information you marked under section 552.136 of the Government Code. The sheriff's office must withhold the e-mail addresses you marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. 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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/mo

Ref: ID# 925101

Enc. Submitted documents

c: Requestor
(w/o enclosures)