



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 1, 2022

Ms. Courtney M. White  
Assistant City Attorney  
City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79105-1971

OR2022-02936

Dear Ms. White:

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# 927914 (ORR# APD 21-3504).

The Amarillo Police Department (the "department") received a request for fourteen points of information pertaining to a specified incident. 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 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you note, and we agree, 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;

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<sup>1</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The department states the information pertaining to points two through six and eight through fourteen relates to a closed criminal case that did not result in conviction or deferred adjudication. Based on the department's representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the information pertaining to points two

through six, eight through fourteen, and the additional information we indicated under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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. This section encompasses article 20A.202(a) of the Code of Criminal Procedure, which provides “[g]rand jury proceedings are secret.” Crim. Proc. Code art. 20A.202(a). However, article 20A.202 does not define “proceedings” for purposes of subsection (a). The Fourth Court of Appeals in *In re Reed* addressed the issue of what constitutes “proceedings” for purposes of the statutory predecessor of article 20A.202 and stated the term “proceedings” could “reasonably be understood as encompassing matters that take place before the grand jury, such as witness testimony and deliberations.” *See In re Reed*, 227 S.W.3d 273, 276 (Tex. App.—San Antonio 2007, orig. proceeding).

Subsequent to the ruling in *Reed*, the 80th Legislature, modeling federal law, added the statutory predecessor to subsection (b) of article 20A.202. *See* Crim. Proc. Code art. 20A.202; FED. R. CRIM. P. 6(e)(6) (“Records, orders, and subpoenas relating to grand jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.”). Article 20A.202(b) states “[a] subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” Crim. Proc. Code art. 20A.202(b). However, this provision does not define or explain what factors to consider in making such a determination, and even if we considered article 20A.202 to be a confidentiality provision, information withheld under this statute would be secret only “for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury.” *Id.*

You seek to withhold some of the remaining information under article 20A.202. However, we conclude you have not explained how the matters upon which the information at issue were based are still “before the grand jury” to warrant keeping the information secret. Thus, upon review of article 20A.202 and related case law, it is not apparent, and you have failed to otherwise explain, how this provision makes the information at issue confidential. *See* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Therefore, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with article 20A.202 of the Criminal Code of Procedure.

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). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information nor the applicability of section 1701.661 of the Occupations Code to the submitted body worn camera recordings. *See generally* Occ. Code § 1701.661(a), (e).

by common-law privacy pursuant to section 552.101. *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.). Thus, the GB must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Therefore, the department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, with the exception of the basic information, the department may withhold the information pertaining to points two through six, eight through fourteen, and the additional information we indicated under section 552.108(a)(2) of the Government Code. The department must withhold the information we indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department 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,

Joseph Hoggatt  
Assistant Attorney General  
Open Records Division

JWH/jm

Ref: ID# 927914

Enc. Submitted documents

c: Requestor  
(w/o enclosures)