



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2022

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

OR2022-08901

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# 935614 (TCOLE ID# 01 05 2022).

The Texas Commission on Law Enforcement (the "commission") received a request for personnel records, including disciplinary and separation information, pertaining to three named individuals.¹ You state the commission has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

¹ You state, and provide documentation demonstrating, the commission sought and received clarification of the information requested. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² Although you also raise section 552.101 of the Government Code in conjunction with section 1701.4525 of the Occupations Code and sections 552.102 through 552.153 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these exceptions apply to the submitted information. See Gov't Code §§ 552.301, .302.

Initially, we note the submitted information contains peace officers' commission 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 commission identification number is a unique computer-generated number assigned to peace officers for identification in the commission's electronic database and may be used as an access device number on the commission's website. Thus, we find the peace officers' commission identification numbers do not constitute public information under section 552.002 of the Government Code, and the commission need not release them.³

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. This section encompasses former section 1701.454 of the Occupations Code. The information at issue contains an F-5 form that was 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, 2005 Tex. Gen. Laws 4094, 4096. Thus, the F-5 form

³ As we are able to make this determination, we need not address your argument against disclosure of this information.

at issue, which we have marked, is governed by the previous version of section 1701.454. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.⁴ Former section 1701.454 of the Occupations Code provides:

(a) A report or statement submitted to the commission 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 commission 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 commission 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 the commission that 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, it is unclear whether the F-5 form created prior to the effective date of the amendment of section 1701.454 pertains to an individual who resigned or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses. Thus, we must rule conditionally. If the individual at issue did not resign or was not terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, then the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the former section 1701.454 of the Occupations Code. However, to the extent the individual at issue resigned or was terminated due to substantiated incidents of

⁴ 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, 2005 Tex. Gen. Laws 4094, 4096.

excessive force or violations of law other than traffic offenses, the commission may not withhold this information on that ground. In that instance, we address the applicability of section 552.101 of the Government Code in conjunction with common-law privacy and section 552.1175 of the Government Code.⁵

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 the commission under subchapter J of chapter 1701 of the Occupations Code.⁶ Section 1701.454 provides:

(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.

Id. § 1701.454. The remaining information consists of information submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. We find the information at issue does not indicate the individuals at issue resigned or were terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Accordingly, the commission must withhold the remainder of the F-5 forms created after the effective date of the amendment of section 1701.454 under section 552.101 of the Government Code in conjunction with current section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *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 Third 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.). Accordingly, the commission must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

⁵ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁶ The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

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 “current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining “honorably retired” for purposes of the Act). The remaining information contains information that may be subject to section 552.1175. Accordingly, to the extent the information we have marked relates 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, the commission must withhold it under section 552.1175 of the Government Code. However, if the individual whose information is at issue is not a current or honorably retired peace officer or does not elect to restrict access to the information in accordance with section 552.1175(b), then the information at issue may not be withheld under section 552.1175 of the Government Code.

In summary, the peace officers' commission identification numbers do not constitute public information under section 552.002 of the Government Code, and the commission need not release them. If the individual at issue did not resign or was not terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, then the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the former section 1701.454 of the Occupations Code. The commission must withhold the remainder of the F-5 forms created after the effective date of the amendment of section 1701.454 under section 552.101 of the Government Code in conjunction with current section 1701.454 of the Occupations Code. If the individual at issue in the information we have marked resigned or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, then the commission must: (1) withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we have marked under section 552.1175 of the Government Code, to the extent it relates 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; and (3) release the remaining information.⁷

⁷ In this instance, we note the remaining information may include a partial social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b). We also note the requestor is a representative of the Office of Capital and Forensic Writs. However, because the information at issue does not contain criminal history record information (“CHRI”) of the individuals named in the present request, we do not address whether the requestor has a right of access to CHRI under sections 411.087 and 411.1272 of the Government Code. *See id.* §§ 411.087(a)(2), .1272.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jxd

Ref: ID# 935614

Enc. Submitted documents

c: Requestor
(w/o enclosures)