



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 1, 2022

Ms. Cynthia Trevino  
Counsel for the City of Natalia  
Denton Navarro Rocha Bernal & Zech, P.C.  
2517 North Main Avenue  
San Antonio, Texas 78212-4685

OR2022-09704

Dear Ms. Trevino:

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# 937053 [City PIA 22-011].

The City of Natalia (the "city"), which you represent, received a request for communications pertaining to and employment information of a named individual. The city states it is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.115, 552.117, 552.1175, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note 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> Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision.

(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 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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(a). 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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. 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. Upon review, we find a portion of the remaining information consists of CHRI that is confidential under section 411.083. Thus,

the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which provides, in part, as follows:

(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”). Upon review, we find some of the remaining information consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Therefore, the city 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.

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.” Gov’t Code § 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 city must withhold the employee’s date of birth in the remaining information 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 Foundation*. *Id.* at 683. 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. 600 (1992) (personal financial information includes choice of particular insurance carrier), 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). 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 concluded the public has a legitimate interest in information that relates to public

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<sup>2</sup> As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Furthermore, information pertaining to leave of public employees is generally a matter of legitimate public interest. *See* Open Records Decision No. 336 at 2 (1982) (names of employees taking sick leave and dates of sick leave taken not private). Upon review, we find portions of the remaining information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, with the exception of the information which we marked for release, the city must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, except as provided by sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). Upon review, we find the city has failed to demonstrate the applicability of section 730.004 to the remaining information, and, thus, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.115 excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration officials. *See* Open Records Decision No. 338 (1982) (finding that statutory predecessor to section 552.115 excepted only those birth and death records which are maintained by the bureau of vital statistics and local registration officials). Because section 552.115 does not apply to information held by the city, none of the remaining information may not be withheld 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 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). 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). Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked and we marked under section 552.117(a)(2) of the Government Code. However, we find the remaining

information at issue does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a peace officer, and the city may not withhold the remaining information under section 552.117(a)(2) of the Government 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. 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* Gov't Code § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Accordingly, to the extent the information at issue relates to current or honorably retired peace officers who elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information you marked under section 552.1175 of the Government Code. Conversely, if the individuals whose information is at issue is not a current or honorably retired peace officer or does not elect to restrict access to their 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 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 city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding 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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the information you marked and we marked under section 552.136 of the Government Code.

In summary, the officer's TCOLE number is not subject to the Act and need not be released to the requestor. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city 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 city must withhold the employee's date of birth in the remaining information under section 552.102(a) of the Government Code. With the exception of the information we marked for release, the city must withhold the information you marked and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the city must withhold the information you marked and we marked under section 552.117(a)(2) of the Government Code. To the extent the information at issue relates to current or honorably retired peace officers who elect to restrict access to their information in accordance with section 552.1175(b) of the

Government Code, the city must withhold the information you marked under section 552.1175 of the Government Code. The city must withhold the motor vehicle record information you marked under section 552.130 of the Government Code. The city must withhold the information you marked and we marked under section 552.136 of the Government Code. The remaining information must be released.

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,

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/mo

Ref: ID# 937053

Enc. Submitted documents

c: Requestor  
(w/o enclosures)