



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2022

Ms. Tiffany Bangs
Assistant County Attorney
Harris County
1019 Congress Street, 15 th Floor
Houston, Texas 77002-1700

OR2022-09706

Dear Ms. Bangs:

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# 939409 (C.A. File No. 22PIA0042).

The Harris County Constable's Office, Precinct 1 (the "constable's office") received a request for information pertaining to two named individuals. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception 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;
- (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. Thus, we find the submitted TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the submitted TCOLE numbers are not subject to the Act and need not be released to the requestor.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The constable's office states the submitted information “relates directly to an open and ongoing criminal investigation.” However, the constable's office does not inform us the information at issue pertains to a specific ongoing criminal investigation or prosecution, nor has the constable's office explained release of the information would interfere in some way with the detection, investigation, or prosecution of crime. Thus, the constable's office has failed to demonstrate the applicability of subsection 552.108(a)(1). Accordingly, we find the constable's office may not withhold any of the submitted information under section 552.108(a)(1) of the Government Code.

We also note the submitted information includes CR-3 accident reports. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov't Code § 552.101. Section 101 encompasses information subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of

¹ 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).

Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). Accordingly, the constable's office must withhold the submitted CR-3 accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 also encompasses section 301.081 of the Labor Code, which governs the release of employment information held by the Texas Workforce Commission (the "commission"). Section 301.081 provides in pertinent part as follows:

- (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
- (b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
- (c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.

Labor Code § 301.081(a)-(c). The submitted documents reflect that the constable's office obtained certain employment information from the commission. Records that are confidential in the hands of the originating governmental body remain confidential when transferred to another governmental body. *See* Open Records Decision Nos. 674 at 4 (2001), 667 at 4 (2000); *see also* Attorney General Opinion H-836 (1976) (governmental bodies have need to maintain unrestricted flow of information, to effectuate state policy that governmental bodies cooperate in the efficient and economical administration of statutory duties). Accordingly, the information at issue is confidential under section 301.081 of the Labor Code while in the custody of the commission. Section 301.081 does not prevent transfer of the information to the constable's office. Thus, pursuant to the intergovernmental transfer doctrine, we conclude the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor 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

constable's office must withhold the dates of birth we have marked 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. The 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.). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's withholding allowance certificate, 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), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545.

Upon review, we conclude the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the constable's office must generally withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, it is not clear whether the listed payroll deductions and benefits reflect mandatory participation by the employees or are the employees' voluntary financial decisions. Thus, to the extent this information reflects the employees' voluntary allocation of salary to optional investment, retirement, or other financial programs offered by the constable's office, the constable's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information at issue reflects the employees' mandatory participation in the constable's office's retirement program or benefits paid by the constable's office, the deduction amounts are not confidential and 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). 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)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance we are unable to determine whether the constable's office employees whose information is at issue are currently-licensed or honorably retired peace officers; therefore, we must rule conditionally. If the employees at issue are currently-licensed or honorably retired peace officers, the constable's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the constable's office may only withhold any marked cellular telephone or pager numbers if the cellular telephone service is not paid for by a governmental body. Conversely, if the employees at issue are not currently-licensed or honorably retired peace officers, the constable's office may not withhold the information at issue under section 552.117(a)(2) of the Government Code.

If the employees at issue are not currently-licensed or honorably retired peace officers, the 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). As noted above, 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 or pager number of a current or former official or employee of a governmental body, provided the cellular telephone or pager 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, the constable's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the constable's office may only withhold any marked cellular telephone and pager numbers if the cellular telephone or pager services are not paid for by a governmental body. Conversely, if the employees at issue did not timely request confidentiality under section 552.024, the constable's office may not withhold the information at issue under section 552.117(a)(1).

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, "[a] biometric identifier in the possession of a

governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the fingerprints at issue under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Accordingly, the constable’s office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 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, the constable’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136(b) 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.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Accordingly, the constable’s office must withhold the insurance policy numbers we 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 id.* § 552.137(a)-(c). The e-mail addresses at issue does not appear to be the type specifically excluded by subsection (c). Upon review, we find the constable’s office must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the submitted TCOLE numbers are not subject to the Act and need not be released to the requestor. The constable’s office must withhold the submitted CR-3 reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The constable’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 301.081 of the Labor Code. The constable’s office must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. The constable’s office must generally withhold all public citizens’ dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, to the extent the information at issue reflects the employees’ mandatory participation in the constable’s office’s retirement program or benefits paid by the constable’s office, the deduction amounts are not confidential and may not be withheld on that basis. If the employees at issue are currently-licensed or honorably retired peace officers, the constable’s office must withhold the information we have marked under section

552.117(a)(2) of the Government Code; however, the constable's office may only withhold any marked cellular telephone and pager numbers if the cellular telephone or pager service is not paid for by a governmental body. If the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the constable's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the constable's office may only withhold any marked cellular telephone and pager numbers if the cellular telephone or pager services are not paid for by a governmental body. The constable's office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The constable's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The constable's office must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The constable's office must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The constable's office must release the remaining information.²

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,

Sarah E. Reese
Attorney
Open Records Division

SER/mo

Ref: ID# 939409

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² The information being released contains a 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. See Gov't Code § 552.147(b).