



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 2, 2022

Sheriff Joseph Lancaster  
Mason County Sheriff's Office  
P.O. Box 391  
Mason, Texas 76856

OR2022-15785

Dear Sheriff Lancaster:

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# 951480.

The Mason County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a former employee. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.111, 552.117, 552.130, and 525.147 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement (the "commission") under subchapter J of chapter 1701 of the Occupations Code.<sup>1</sup> The submitted information 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 at issue is governed by the previous version of section 1701.454. *See id.* § 6.<sup>2</sup> Former section 1701.454 provides as follows:

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<sup>1</sup>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.

<sup>2</sup>Section 6 of the amending legislation states

(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 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, we find the F-5 form, which we have marked, is not subject to release under the provisions of former section 1701.454. Accordingly, the sheriff's office must withhold the F-5 form we have marked under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code. However, the remaining information is not confidential under former section 1701.454 and the sheriff's office may not withhold it under section 552.101 on that ground.

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 has 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). The sheriff's office must withhold the submitted date of birth under section 552.102(a) of the Government Code.

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[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."

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. Upon review, we find the sheriff’s office has failed to establish section 552.111 is applicable to the remaining information. Therefore, the sheriff’s office may not withhold any of the remaining information on that ground.

Section 552.147(a) of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). The sheriff’s office may withhold the submitted social security number under section 552.147 of the Government Code.<sup>1</sup>

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); *see also id.* 552.003(1-b)) (defining “honorably retired” for purposes of the Act). But an individual’s personal post office box number is not a “home address” for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information we have marked is a current or honorably retired peace officer as defined by article 2.12, then the sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. Conversely, if this individual is not a current or honorably retired peace officer as defined by article 2.12, then the sheriff’s office may not withhold the marked information under section 552.117(a)(2). The sheriff’s office has not established section 552.117 is applicable to the remaining information and may not withhold it on that ground.

If the information we have marked under section 552.117 pertains to an individual who is not a current or honorably retired peace officer, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether 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, the sheriff’s office may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to

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<sup>1</sup> As our ruling is dispositive, we do not address the other argument of the sheriff’s office to withhold this information.

the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. The sheriff's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the individual at issue timely elected to withhold that information.

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. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the sheriff's office may withhold the submitted social security number under section 552.147 of the Government Code. The sheriff's office must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with former section 1701.454 of the Occupations Code; (2) the submitted date of birth under section 552.102(a) of the Government Code; and (3) the information we have marked under section 552.130 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the individual at issue is a current or honorably retired peace officer as defined by article 2.12 of the Code of Criminal Procedure; however, if this individual is not a current or honorably retired peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the information at issue under section 552.117(a)(1) of the Government Code. 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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jm

Ref: ID# 951480

Enc. Submitted documents

c: Requestor  
(w/o enclosures)