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ATTORNEY GENERAL OF TEXAS

June 15, 2022

Mr. Matt Wade
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Underwood Law Firm
P.O. Box 16197
Lubbock, Texas 79490

OR2022-17279

Dear Mr. Wade:

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# 953941.

The Andrews Police Department (the "department"), which you represent, received a request for information pertaining to a specified investigation. You state the department has released some information to the requestor. You state the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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." Gov't Code § 552.101. The department asserts some of the information at issue is confidential under former section 1703.306 of the Occupations Code, which provided for the confidentiality of certain polygraph information. However, the 87th Legislature repealed former chapter 1703 of the Occupations Code effective September 1, 2021. Act

¹ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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 id.* § 552.147(b).

of May 31, 2021, 87th Leg., R.S., HB 1560, § 2.01(1). Accordingly, the department may not withhold any portion of the information under section 552.101 of the Government Code in conjunction with former section 1703.306 of the Occupations 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note the requestor has a right of access to her client's minor children's information. *See* Gov't Code § 552.023(a) ("a person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). However, upon review, we find the department has failed to demonstrate any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, the department may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

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.² 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 id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Some of the remaining information pertains to individuals who were peace officers of another law enforcement agency at the time the information at issue was created. Thus, to the extent the information we indicated pertains to a current or honorably retired peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we indicated under section 552.1175 of the Government Code. If the individual whose information we indicated is not a current or honorably retired peace officer or no election is made, the department may not withhold this information under section 552.1175 of the Government Code.

² 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.

In summary, to the extent the information we indicated pertains to a current or honorably retired peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we indicated under section 552.1175 of the Government Code. The department must release the remaining information.³

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 953941

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the requestor has a special right of access to some of the information being released under section 552.023 of the Government Code and section 261.201(k) of the Family Code. *See* Gov't Code § 552.023; ORD 481 at 4; *see also* Fam. Code § 261.201(k). Thus, if the department receives another request for this same information from a different requestor, it must again seek a ruling from this office. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).