



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2022

Mr. Tom Needham
Executive Assistant Criminal District Attorney
McLennan County Criminal District Attorney's Office
219 North 6th Street, Suite 200
Waco, Texas 76701

OR2022-19019

Dear Mr. Needham:

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# 955778 (ORR# 2019-1390-C1).

The McLennan County Criminal District Attorney's Office (the "district attorney's office") received a request for information about a named individual. The district attorney's office claims some of the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.130 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted 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 district attorney's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.²

¹ We note the district attorney's office did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, sections 552.101, 552.1175, and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301.

² As our ruling is dispositive, we do not address the other argument of the district attorney's office to withhold this 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. Section 1701.454 provides as follows:

- (a) All information 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 subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information includes an F-5 Separation of Licensee form that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. However, we are unable to determine whether the individual at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the 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 F-5 form in its entirety under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, if the individual at issue resigned or was terminated due to substantiated incidents of excessive force or violations of law other than traffic offenses, then the commission may not withhold the F-5 form on that ground.

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 the *Industrial Foundation* decision. *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). 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.). The district attorney’s office must withhold the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy. We also find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the district attorney’s office must also withhold the information we have marked under section 552.101 of the Government Code 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. Gov't Code § 552.1175. For purposes of section 552.1175, "family member" means a spouse, minor child, or adult child who resides in the person's home. *Cf.* Gov't Code § 552.117(c) ("family member" has meaning assigned by Fin. Code § 31.006(d)). Section 552.1175, applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" Gov't Code § 552.1175(a)(1); *see id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Accordingly, the district attorney's office must withhold the information we have marked under section 552.1175 of the Government Code if the individual at issue is a current or honorably retired peace officer and elects to restrict access to the marked information at issue in accordance with section 552.1175(b) of the Government Code. Conversely, if the individual at issue is not a current or honorably retired peace officer or does not elect to restrict access to the information at issue in accordance with section 552.1175(b), then the district attorney's office may not withhold this information under section 552.1175 of the Government Code.³

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).⁴ *See id.* § 552.137(a)-(c). The remaining information contains an e-mail address of a member of the public that does not appear to be of a type specifically excluded by section 552.137(c), and the district attorney's office does not inform us a member of the public has affirmatively consented to its release. Therefore, the district attorney's office must withhold the e-mail address of a member of the public we have marked under section 552.137 of the Government Code.

In summary, the district attorney's office must withhold the following: (1) the information we have marked under section 552.130 of the Government Code; (2) the submitted F-5 form in its entirety under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code 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; (3) the submitted date of birth under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the information we have marked under section 552.137 of the Government Code. The district attorney's office must release the remaining information.

³ Regardless of the applicability of section 552.1175, 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).

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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/mo

Ref: ID# 955778

Enc. Submitted documents

c: Requestor
(w/o enclosures)