



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2022

Ms. Krystal Garcia
City Clerk
City of Pearsall
214 South Ash Street
Pearsall, Texas 78061

OR2022-20579

Dear Ms. Garcia:

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# 959741.

The City of Pearsall (the "city") received a request for a named police officer's personnel file. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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:

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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.²

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. Section 552.101 encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms); 226 (1979) (W-2 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find none of the remaining information constitutes

² As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

tax return information for the purposes of section 6103(a) of title 26 of the United States Code. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.³

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code. Section 1701.454 governs the public availability of information submitted to TCOLE under subchapter J of chapter 1701 of the Occupations Code and provides as follows:

(a) All information submitted to [TCOLE] 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 [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The remaining information contains a F-5 Report of Separation of Licensee. The information at issue does not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 report under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, we find you have failed to demonstrate any of the remaining information was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

After reviewing the information at issue, we have determined no novel or complex issue exists in the remaining information. Thus, we address your remaining arguments and other applicable exceptions in a summary ruling.⁴

The city must withhold the submitted L-2 form under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The city must withhold the employee's date of birth in the remaining information under section 552.102(a) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law

³ We note Open Records Decision No. 684 (2009) permits a governmental body to redact certain categories of information, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; without the necessity of seeking a decision from the attorney general. *See* ORD 684.

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

privacy. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The city must withhold the insurance policy number we have marked under section 552.136 of the Government Code. The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. The city 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/be

Ref: ID# 959741

Enc. Submitted documents

c: Requestor
(w/o enclosures)