



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 21, 2022

Ms. Audra Gonzalez Welter  
Assistant General Counsel  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2903

OR2022-29144

Dear Ms. Welter:

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# 973500 (OGC# 206625).

The University of Texas System (the "system") received a request for personnel records pertaining to a named employee. We understand the system will redact certain information pursuant to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code; certain information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001); information pursuant to section 552.1175(f), motor vehicle record information under section 552.130(c) of the Government Code; access device numbers pursuant to section 552.136(c) of the Government Code; and certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You also state you will redact dates of birth pursuant

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<sup>1</sup> Section 552.117 of the Government Code 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. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c)(2). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. *See* ORD 670 at 6. Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See id.* § 552.1175(b), (f). Section 552.130(c) of

to Open Records Letter No. 2016-07336 (2019).<sup>2</sup> You state the system will release some of the requested information. You claim some of the submitted information is not subject to the Act. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note some of the submitted information is not “public information” subject to disclosure under the Act. Section 552.002(a) of the Government Code defines “public information” as information 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

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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 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

<sup>2</sup> Open Records Letter No. 2016-07336 authorizes the system to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general’s decision. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001).

<sup>3</sup> We assume 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 those records contain substantially different types of information than that submitted to this office.

made public under section 552.021 of the Government Code. You inform us when combined with an individual's password, a UTEID serves as the required log-on protocol to access the computer mainframe, which is the system's centralized hub that runs all its high-level electronic functions. You also state the UTEIDs are used solely to access the system's computer mainframe and they have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Additionally, we understand a Texas Commission on Law Enforcement ("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. Upon review, we find the submitted TCOLE numbers, along with UTEIDs contained in the information at issue, are not "public information" for purposes of the Act, and the system is not required to release this information in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 51.971 of the Education Code, which provides, in relevant part:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

(D) auditing.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

...

(c) The following are confidential:

(1) Information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c)-(d). You state the system is an institution of higher education under section 61.003 of the Education Code. *See id.* § 51.971(a)(2), 61.003. You also state the information you indicated relates to closed internal compliance investigations conducted by the system's police department. You further state the investigations were initiated in response to complaints alleging misconduct by a system employee and were conducted in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find the information at issue relates to investigations conducted under the system's compliance program. *See id.* § 51.971(a)(1).

You assert some of the remaining information pertains to completed investigations, portions of which are subject to section 51.971(c). Section 51.971(c)(1) makes confidential information that identifies individuals as complainants, as having sought guidance from a compliance program, or as participants in an investigation conducted under a compliance program. *Id.* § 51.971(c)(1). Section 51.971(c)(2) makes confidential information that identifies individuals alleged to have committed the activities that are the subject of a complaint made to a compliance program office if the office determines the report is unsubstantiated. *Id.* § 51.971(c)(2). However, subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d).

You state the information you marked pertains to a completed investigation in which the system found the allegations to be unsubstantiated. You assert this information is confidential in its entirety based on the targeted nature of the present request for information. Upon review, we agree release of the information you marked would directly or indirectly reveal the identity of an individual alleged to have committed the activity that is the subject of the unsubstantiated allegations. You inform us the individual whose information is at issue has not consented to release of their information. *See id.* § 51.971(d). Accordingly, we conclude the system must withhold the information you marked in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code.

Further, you state the information you marked pertains to closed investigations in which the allegations were substantiated in part and unsubstantiated in part. You also state release of the information you marked would directly or indirectly reveal the identities of those individuals participating in compliance program investigations. Subsection (c) does not apply to information related to an individual who consents to disclosure of the information. *Id.* § 51.971(d). You state none of the individuals whose information is at issue have

consented to release of their information. Upon review, we find the release of the information you marked would directly or indirectly identify individuals who made a report to, sought guidance from, or participated in the compliance program investigation, and the identity of the individuals who was the subject of the unsubstantiated allegations. *See id.* § 51.971(c). Thus, the system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code.

You assert some of the remaining information 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 of May 31, 2021, 87th Leg., R.S., HB 1560, § 2.01(1). Therefore, the system may not withhold any of the remaining 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 laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 and subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find some of the remaining information, which you marked, consists of CHRI that is confidential under section 411.083. Thus, the system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004, 611.0041, or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* Upon review, we find some of the remaining information, which you marked, consists of a mental health record that is subject to chapter 611 of the Health and Safety Code. Accordingly, the system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the “MPA”). Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the information you marked consists of medical records subject to the MPA. Accordingly, the system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 159.002 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). 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, this office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the system must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985)). After review of the remaining information, we find you have failed to demonstrate any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the system may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer

safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the remaining information includes firearm serial numbers that, if released, would interfere with law enforcement or prosecution of crime. You argue the information could be used on illegal firearms or in a false missing weapons report. Based on these representations and our review, we agree the release of the firearm serial numbers at issue would interfere with law enforcement. Accordingly, the system may withhold the firearm serial numbers you marked under section 552.108(b)(1) of the Government Code.

As noted above, you state the system will redact certain information subject to section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670. Section 552.117(a)(2) 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). We also 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) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We understand the individual whose information is at issue is an individual subject to section 552.117(a)(2). *See id.* § 552.117(a)(2). Accordingly, with the exception of the information we marked for release, the system must withhold the information you marked under section 552.117(a)(2) of the Government Code. Upon review, however, we find the information we marked for release does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or honorably retired peace officer, and the system may not withhold such information under section 552.117(a)(2).

In summary, the submitted TCOLE numbers, along with UTEIDs contained in the information at issue, are not “public information” for purposes of the Act, and the system is not required to release this information in response to this request. The system must withhold the information you marked in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code. The

system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(c) of the Education Code. The system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code. The system must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The system may withhold the firearm serial numbers you marked under section 552.108(b)(1) of the Government Code. With the exception of the information we marked for release, the system must withhold the information you marked under section 552.117(a)(2) of the Government Code. The system 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,

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMH/mo

Ref: ID# 973500

Enc. Submitted documents

c: Requestor  
(w/o enclosures)