



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 10, 2022

Mr. Matt Wade  
Counsel for the City of Levelland  
Underwood  
P.O. Box 16197  
Lubbock, Texas 79490

OR2022-35205

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# 984369.

The City of Levelland (the "city"), which you represent, received a request for all personnel records for a named police officer. You claim the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.140 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the responsive 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;

---

<sup>1</sup> We note the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exceptions you claim can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

(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 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.<sup>2</sup>

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. Section 552.101 encompasses information made confidential by the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(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.

---

<sup>2</sup> As we are able to make this determination, we need not address your argument against disclosure of this information.

(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.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* Upon review, we find a portion of the submitted information, which we have marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find the city has not demonstrated any portion of the remaining information consists of medical records for purposes of the MPA, and the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which pertains to L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Upon review, we find 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.

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

(a) All information submitted to [TCOLE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, 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.

*Id.* § 1701.454. The remaining information includes information that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the named officers resigned or were 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 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

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.”<sup>3</sup> Gov’t Code § 552.102(a). The Texas Supreme Court 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). Accordingly, the city must withhold the employee’s date of birth within the remaining information under section 552.102(a) of the Government Code.<sup>4</sup>

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. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally

---

<sup>3</sup> 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).

<sup>4</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

highly intimate or embarrassing. *See* Open Records Decision Nos. 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). 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.). Upon review, we find some of the remaining information, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, with the exception of the information we have marked for release, the city must withhold all living public citizens' dates of birth, the information you marked, and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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); *Id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). We 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* Gov't Code § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). We further note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you marked and the additional information we have marked under section 552.117(a)(2) of the Government Code.<sup>5</sup> Upon review, however, we find the remaining information 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 city may not withhold the remaining information under section 552.117(a)(2).

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. *Id.* § 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[.]

---

<sup>5</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

*See id.* §§ 552.1175(a)(1); *see also* 552.003(1-b.) (defining “honorably retired” for purposes of the Act). We note section 552.1175 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we find some of the remaining information may pertain to a peace officer and is held by the city in a non-employment capacity. Thus, to the extent the information at issue pertains to an individual who elects to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. If the individual whose information is at issue does not elect to restrict access to their information pursuant to section 552.1175(b), the city may not withhold this information under section 552.1175 of the Government Code. However, the city has not demonstrated any portion of the remaining information pertains to the types of individuals to whom section 552.1175 applies. As such, the city may not withhold any of the remaining information on this basis.

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130. Accordingly, the city must withhold the motor vehicle record information you marked, and the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code.

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). *See* Gov’t Code § 552.137(a)-(c). Therefore, the city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. However, we find you have failed to demonstrate section 552.137 is applicable to any of the remaining information at issue. Therefore, the city may not withhold any portion of the remaining information under section 552.137 of the Government Code.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). The city came into possession of the submitted military discharge records after September 1, 2003. Accordingly, we conclude the city must withhold the submitted DD-214 form under section 552.140 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services [(“EMS”)] personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Upon review, we find the remaining information does not consist of communications between certified emergency medical services personnel providing medical supervision and patients that were made in the course of providing emergency medical services to the patients. *See id.* § 773.091(a). Accordingly, we find section 773.091 does not apply to any portion of the remaining information, and the city may not withhold the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other

formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083. Upon review, we find you have failed to demonstrate how the remaining information consists of confidential CHRI. Therefore, the city may not withhold any portion of the submitted information under section 552.101 on this basis.

In summary, the officer’s TCOLE number is not subject to the Act and need not be released to the requestor. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. 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 submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the employee’s date of birth within the remaining information under section 552.102(a) of the Government Code. With the exception of the information we have marked for release, the city must withhold all living public citizens’ dates of birth, the information you marked, and the additional information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we have marked for release, the city must withhold the information you marked and the additional information we have marked under section 552.117(a)(2) of the Government Code. To the extent the information at issue pertains to an individual who elects to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The city must withhold the motor vehicle record information you marked, and the additional information we have marked, under section 552.130 of the Government Code. The city must withhold the insurance policy numbers within the remaining information under section 552.136 of the Government Code. The city must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city must withhold the submitted DD-214 form under section 552.140 of the Government Code. 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,

Colin Henry  
Attorney  
Open Records Division

CEH/pt

Ref: ID# 984369

Enc. Submitted documents

c: Requestor  
(w/o enclosures)