



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2022

Mr. Leonard V. Schneider, IV
Counsel for the City of Huntsville
Liles & Parker, P.L.L.C.
2261 Northpark Drive, Suite 445
Kingwood, Texas 77339

OR2022-38988

Dear Mr. Schneider:

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# 986024 (PIR No. 22-169).

The Huntsville Police Department (the "department"), which you represent, received a request for information pertaining to a named officer. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we understand the department has redacted some of the submitted information pursuant to section 552.024(c) of the Government Code, section 552.130(c) of the Government Code, and section 552.147(b) of the Government Code.² Additionally, we

¹ Although you also raise section 552.1175 of the Government Code for portions of the submitted information, we note section 552.117 of the Government Code is the proper exception to raise in this instance because the department holds the submitted information in an employment capacity.

² 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* Gov't Code § 552.024(c). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redact 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).

understand the department has redacted information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001).³ However, we note the department has redacted additional information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold the information at issue without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302. Thus, in the future, the department should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

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 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:
 - (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 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.

(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 a peace officer 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.

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 protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See* Gov't Code § 411.083(a). 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 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided by chapter 411, subchapter F, or subchapter E-1 of the Government Code. *See* Gov't Code § 411.083(a). 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. Thus, 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 chapter 411, subchapter F, of the Government Code. We also note records relating to routine traffic violations are not considered criminal history information. *Cf. Id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review, we find a portion of the information at issue consists of CHRI that is confidential under section 411.083. Thus, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, upon review, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Therefore, the department may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code on that basis.

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 department 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.

As noted above, the department has redacted information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 and information subject to section 552.117(a)(1) of the Government Code in accordance with section 552.024(c) of the Government Code. However, there is redacted information that is not subject to these exceptions. 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), .003(1-b) (defining "honorably retired" for purposes of the Act). 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 "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 note a post office box number is not a "home address" for purposes of section 552.117. *See* Open Record Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). In this instance, we are unable to determine whether the individual whose information is at issue is a currently licensed or honorably retired peace officer. Therefore, we must rule conditionally. If the individual at issue is a currently licensed or honorably retired peace officer, then the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individual at issue is not a currently licensed or honorably retired peace officer, then the department may not withhold the information at issue under section 552.117(a)(2). In either instance, we find you have failed to demonstrate the applicability of section 552.117(a)(2) to the remaining information, and thus, no portion of the remaining information may be withheld under section 552.117(a)(2).

If the individual at issue is not a current licensed or honorably retired peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). As noted above, 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). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made.

See Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee or official only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual whose information is at issue is not a currently licensed or honorably retired peace officer as defined by article 2.12, but timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024, then the department may not withhold the information at issue under section 552.117(a)(1). In either instance, we find you have failed to demonstrate the applicability of section 552.117(a)(1) to the remaining information, and thus, no portion of the remaining information may be withheld under section 552.117(a)(1).

As noted above, you have redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code. Section 552.130 of the Government Code excepts from public disclosure 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. *See* Gov't Code § 552.130. We note the remaining information contains additional motor vehicle record information. Accordingly, the department must withhold the motor vehicle record information you marked and the additional information we marked under section 552.130 of the Government 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 argument and other applicable exceptions in a summary ruling.

The department must withhold the submitted L-2 and L-3 forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The department must withhold the employee's date of birth we marked under section 552.102(a) of the Government Code.⁴ The department 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

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).

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/mo

Ref: ID# 986024

Enc. Submitted documents

c: Requestor
(w/o enclosures)