



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2010

Mr. Christopher K. Davis  
Texas Commission on Law Enforcement Officer Standards and Education  
6330 U.S. Highway 290 East, Suite 200  
Austin, Texas 78723

OR2010-06943

Dear Mr. Davis:

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# 379339.

The Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") received a request for documents related to the appeals of F-5 reports, including statements submitted by the employer as well as the employee or his/her representative, for seven named peace officers employed by the Harris County Constable (the "constable"), Precinct 4. You state you have no responsive records pertaining to one of the named individuals, who you have determined is not a peace officer or former employee of Precinct 4.<sup>1</sup> You claim Exhibits C-1 through C-6 are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted 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. Section 552.101 of the Government Code encompasses section 1701.454

---

<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

of the Occupations Code, which governs the release of reports or statements submitted to TCLEOSE. Section 1701.454 provides as follows:

(a) A report or statement submitted to [TCLEOSE] under [subchapter J, "Employment Records"] 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 [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. You assert Exhibits C-1 through C-6 are excepted from disclosure under section 1701.454. Exhibits C-1 through C-6 are TCLEOSE files concerning the F-5 appeals of the named officers. These exhibits contain F-5 reports ("Report of Separation of Licensee"). You assert the officers at issue did not resign and were not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We note, however, the information in Exhibit C-2 reflects it pertains to an officer who was terminated due to a substantiated incident of excessive force. Therefore, the F-5 form in Exhibit C-2 is not confidential under section 1701.454. Because the F-5 reports in Exhibits C-1 and C-3 through C-6 do not pertain to officers who resigned or were terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, we agree the F-5 reports in these exhibits are confidential under section 1701.454 of the Occupations Code and must be withheld pursuant to section 552.101 of the Government Code.

The remaining documents were submitted by peace officers contesting their F-5 reports and rebuttal evidence submitted by their employing agency. In accordance with section 1701.4525 of the Occupations Code, a peace officer may contest information contained in his F-5 report by submitting to the employing agency and TCLEOSE a written request for correction of the report and any evidence contesting information contained in the report. *Id.* § 1701.4525. As noted above, section 1701.454 makes confidential a report or statement submitted to TCLEOSE under subchapter J, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. *Id.* § 1701.454. You argue these evidentiary records are also confidential under section 1701.454 because they were submitted to TCLEOSE under subchapter J as part of the F-5 appeals process under section 1701.4525. Statutory confidentiality, however, requires express language that information is confidential; it will not be implied from a statutory structure. *See* Open Records Decision Nos. 658 (1998), 478 (1987). Section 1701.454 does not make all information submitted under subchapter J confidential. Rather, this section only protects the F-5 report and statement submitted to TCLEOSE. In reviewing subchapter J, the only reference to a statement is found in

section 1701.452(b), which states the head of the law enforcement agency or designee shall include in the report a statement whether the license holder was honorably discharged, generally discharged, or dishonorably discharged. *See* Occ. Code § 1701.452(b). The current version of the subchapter does not refer to any other statements. *See id.* §§ 1701.451-.458. Prior to legislative amendment, subchapter J did reference another statement. Specifically, the predecessor to section 1701.452(b) provided that a person resigning or who was terminated from employment may submit a written statement to TCLEOSE to contest or explain any matter contained in the report. Act of May 10, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2226-27. This language was removed, however, when the legislature amended section 1701.452 and added section 1701.4525. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4092, 4092-94. In omitting this language, we must presume the legislature was aware of the current state of the law and intended to remove this type of statement from the scope of section 1701.452(b). *See* Open Records Decision No. 643 at 2-3 (citing *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.—Corpus Christi 1985, no writ)) (when legislature amends a law, it is presumed to have intended to change the law); *Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985) (“Every word excluded from a statute must be presumed to have been excluded for a reason.”); *State v. Eversole*, 889 S.W.2d 418, 425 (Tex. App.—Houston [14th Dist.] 1994, writ ref’d) (“when the legislature amends a particular statute and omits certain language of the former statute in its amended version, the legislature specifically intended that the omitted portion is no longer the law”); *Cook v. State*, 824 S.W.2d 634, 643 (Tex. App.—Dallas 1991, writ ref’d) (court should give effect to intended change in statute’s amendment and presume that every word excluded from amended statute must have been excluded for a purpose); *Durish v. Channelview Bank*, 809 S.W.2d 273, 277 (Tex. App.—Austin 1991, writ denied) (legislature’s amendment indicates it intended to change original act by creating new right or withdrawing old one). Moreover, we find that if the legislature intended to make confidential all records submitted to TCLEOSE under subchapter J, it could have easily done so. Instead it limited confidentiality to the report and statement. Because the remaining information does not consist of statements from the head of the law enforcement agency or designee under section 1701.452, it may not be withheld under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

We note Exhibit C-6 contains a Texas Peace Officer’s Crash Report (“accident report”) which was completed pursuant to section 550.065(b) of the Transportation Code. Section 552.101 of the Government Code also encompasses section 550.065(b), which states, except as provided by subsection (c) or (e), accident reports are privileged for the confidential use of certain specified entities. Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides at least two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides two or more pieces of information specified

by the statute. *Id.* In this instance, the requestor has not provided TCLEOSE with any of the information specified by section 550.065(c)(4). Thus, TCLEOSE must withhold the accident report, which we marked, in its entirety under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code.

Exhibit C-6 also contains fingerprints. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that a governmental body may not release fingerprint information except in certain limited circumstances. Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). It does not appear section 560.002 permits the disclosure of the fingerprints contained in Exhibit C-6. Therefore, TCLEOSE must withhold the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Exhibits C-1, C-2, C-5, and C-6 contain personal information of peace officers. Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(b). We note section 552.1175 does not encompass an officer's date of birth. We further note section 552.1175 is applicable to an officer's personal cellular telephone number if the officer personally pays for the service. *Cf.* Open Records Decision No. 670 at 6 (2001) (analyzing section 552.117, an analogous provision of the Government Code, and extending section 552.117(a)(1) exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024); Open Records Decision No. 506 at 5-6 (1988) (analyzing section 552.117 and determining that it is not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Therefore, TCLEOSE must withhold the marked home addresses, home telephone numbers, cellular telephone numbers, and social security numbers belonging to peace officers who elect to restrict access to this

information in accordance with section 552.1175.<sup>2</sup> If the officers do not elect to withhold this information in accordance with section 552.1175, it must be released.

Exhibits C-2 and C-6 contain Texas motor vehicle record information that is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. *Id.* § 552.130(a)(1), (2). Therefore, TCLEOSE must withhold the license plate numbers, vehicle identification numbers, copy of a Texas driver's license, and driver's license numbers, expiration dates, class types, and restrictions we marked under section 552.130.<sup>3</sup>

Finally, Exhibits C-4 and C-6 contain e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 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). *Id.* § 552.137(a)-(c). The e-mail addresses we have marked are not specifically excluded by section 552.137(c). Therefore, unless the individuals at issue consent to release of their e-mail addresses, TCLEOSE must withhold the e-mail addresses we have marked under section 552.137.

In summary, TCLEOSE must withhold the F-5 reports we marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. TCLEOSE must withhold the accident report we marked under section 552.101 in conjunction with section 550.065 of the Transportation Code. TCLEOSE must withhold the fingerprints we marked under section 552.101 in conjunction with section 560.003 of the Government Code. TCLEOSE must withhold the marked home addresses, home telephone numbers, cellular telephone numbers, and social security numbers belonging to peace officers who elect to restrict access to this information in accordance with section 552.1175. TCLEOSE must withhold the license plate numbers, vehicle identification numbers, copy of a Texas driver's license, and driver's license numbers, expiration dates, class types, and restrictions we marked under section 552.130. TCLEOSE must withhold the e-mail addresses we marked under section 552.137. The remaining information must be released.

---

<sup>2</sup>To the extent the peace officers do not elect to restrict access to their personal information in accordance with 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).

<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code, and a Texas driver's license number, a copy of a Texas driver's license, and a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales  
Assistant Attorney General  
Open Records Division

JCE/eeg

Ref: ID# 379339

Enc. Submitted documents

c: Requestor  
(w/o enclosures)