



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2012

Mr. C. R. Servise
Chief Deputy
Burnet County Sheriff's Office
P.O. Box 1249
Burnet, Texas 78611

OR2012-19977

Dear Mr. Servise:

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# 473886 (ORR# 1665).

The Burnet County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named former employee of the sheriff's office. You indicate most of the submitted information has been released. You claim portions of the remaining submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excludes social security numbers, driver's license numbers, and home addresses from the scope of the request. Accordingly, these types of information, which we have marked, are not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request and the sheriff's office is not required to release that information in response to the request. Thus, we do not consider your arguments under sections 552.117, 552.130, and 552.147 of the Government Code against disclosure of the marked information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes,

such as 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 id.* § 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 Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, 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. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find some of the submitted information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the sheriff's office must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

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

Occ. Code § 1701.454. The submitted information includes information that was submitted to TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the named officer resigned or was

terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold the submitted F-5 form, which you have marked, under section 552.101 in conjunction with section 1701.454 of the Occupations Code. You also seek to withhold TCLEOSE Forms F-6 (Report of Training), F-7 (Report of College Education), and L-1 (Report of Appointment/License Application) under section 1701.454. We note section 1701.454 is applicable only to information submitted to TCLEOSE under subchapter J of chapter 1701 of the Occupations Code. *See id.* § 1701.454(a). The only report or statement found in subchapter J is a Form F-5. *See id.* § 1701.452. We therefore conclude the sheriff's office may not withhold the submitted Forms F-6, F-7, and L-1 under section 552.101 on this basis. *See Open Records Decision No. 649 at 3 (1996)* (language of confidentiality provision controls scope of its protection).

You generally raise section 552.101 of the Government Code for the submitted forms F-6, F-7, and L-1. However, you have not pointed to any other statutory confidentiality provision, nor are we aware of any, that would make any of this information confidential for purposes of section 552.101. *See, e.g., Open Records Decision Nos. 611 at 1 (1992)* (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the sheriff's office may not withhold the submitted forms F-6, F-7, and L-1 under section 552.101 of the Government 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."¹ 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). Having carefully reviewed the information at issue, we have marked information that must be withheld under section 552.102(a) of the Government Code.

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 peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See Gov't Code § 552.117(a)(2)*. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. You state the individual at issue is a licensed peace officer. Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, we find the remaining information you have marked does not consist of the home address, home telephone number, emergency

¹The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

contact information, social security number, or family member information of a peace officer, and the sheriff's office may not withhold it under section 552.117(a)(2).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note section 552.130 does not protect the state of issuance of a driver's license. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find you have not demonstrated how the remaining information you marked under section 552.130 consists of motor vehicle record information, and the sheriff's office may not withhold it on that basis.

In summary, the sheriff's office must withhold (1) the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (2) the F-5 report you marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (3) the date of birth we marked under section 552.102(a) of the Government Code; (4) the information we marked under section 552.117(a)(2) of the Government Code; and (5) the motor vehicle record information we have marked under section 552.130 of the Government Code. The sheriff's office must release the remaining submitted 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 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 473886

Enc. Submitted documents

c: Requestor
(w/o enclosures)