



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 6, 2014

Ms. L. Carolyn Nivens  
Paralegal  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2014-00333

Dear Ms. Nivens:

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# 510023 (Ross Banks File No. 3957-8).

The Seabrook Police Department (the "department"), which you represent, received a request for all civil service files, the employment file, and records relating to sustained disciplinary actions and events pertaining to a named peace officer. You state the department will release some of the information. You state the department does not have information responsive to the request for records relating to sustained disciplinary actions and events.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.114, 552.115, 552.117, 552.1175, 552.119, 552.136, 552.137, and 552.139 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with sections 552.102, 552.114, and 552.119 of the Government Code, section 552.101 does not encompass other sections of the Act.

Initially, we note the requestor excluded from her request social security numbers, driver's license numbers, and the officer's home address. Accordingly, these types of information are not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

You state the department will withhold all direct deposit authorization forms, W-2 and W-4 forms, L-2 and L-3 Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") declarations, any copy of a Texas driver's license, and any credit card number, debit card number, charge card number, insurance policy number, bank account number and bank routing number pursuant to Open Records Decision No. 684 (2009). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without requesting a decision from this office, including: a direct deposit authorization form under section 552.101 in conjunction with the common-law right to privacy; W-2 and W-4 forms under section 552.101 in conjunction with section 6103 of title 26 of the United States Code; and L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306(b) of the Occupations Code. Open Records Decision No. 684 also authorizes governmental bodies to withhold a copy of a Texas driver's license under section 552.130(a)(1) of the Government Code and access device numbers under section 552.136 of the Government Code. However, the Texas legislature amended section 552.130, effective September 1, 2011, to allow a governmental body to redact the information described in subsection 552.130(a)(1) 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)*. We note the Texas legislature also amended section 552.136 effective September 1, 2011, to allow 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)*. Thus, the statutory amendments to sections 552.130 and 552.136 superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to sections 552.130(a)(1) and 552.136 in accordance with sections 552.130 and 552.136, respectively, not Open Records Decision No. 684.

You further state the department will redact the officer's home telephone numbers, personal cellular telephone numbers, and information that reveals whether he has family members pursuant to Open Records Decision No. 670 (2001). Open Records Decision No. 670 is a previous determination that authorizes all governmental bodies to withhold the 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.

You state the department will also redact the officer's date of birth. We note a governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); *see also, e.g., id.* §§ 552.024(c), .147; Open Records Decision No. 673 (2001) (previous determinations). We are unaware of any statutory or other authority that would permit the department to withhold the officer's date of birth held in an employment context without asking this office for a decision. Therefore, the department may not redact the officer's date of birth without asking this office for a ruling under section 552.301 of the Government Code.

You assert the officer's TCLEOSE identification number should be withheld from disclosure. 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. You state the officer's TCLEOSE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the TCLEOSE website. Based on your representations and our review, we find the TCLEOSE number we have marked does not constitute public information under section 552.002 of the Government Code. Therefore, the TCLEOSE number we have marked is not subject to the Act and need not be released to the requestor.<sup>3</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." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, including section 411.192 of the Government Code, which governs the release of information maintained by the Texas Department of Public Safety ("DPS") concerning the licensure of an individual to carry a concealed handgun.<sup>4</sup> Section 411.192 provides in part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone

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<sup>3</sup>As our ruling is dispositive for this information, we need not address your argument under section 552.136 of the Government Code against its disclosure.

<sup>4</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).

number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a)-(b). The information we have marked pertains to concealed handgun license information that has been received from DPS. In this instance, the requestor is neither a criminal justice agency nor the license holder whose information is at issue. We note section 411.193 is not applicable. *Id.* § 411.193 (making a statistical report including the number of licenses issued, denied, revoked, or suspended by DPS during the preceding month available to the public). Therefore, the department must withhold the concealed handgun license information we have marked under section 552.101 in conjunction with section 411.192 of the Government Code.

Section 552.101 also encompasses chapter 411 of the Government Code, which pertains to criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. 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 law with respect to CHRI it generates. *Id.* 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 criminal justice purposes. *See* Gov't Code § 411.089(b)(1). We note section 411.083 does not apply to active warrant information or other information relating to an individual's current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement with the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find a portion of the information, which we have marked, constitutes confidential CHRI. This information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, you have failed to demonstrate any of the remaining information constitutes confidential CHRI. Thus, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses 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.

(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 you have failed to demonstrate any portion of the remaining information consists of a physician-patient communication or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with the MPA.

Section 552.101 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 that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992)* (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy); 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information); 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history).

Additionally, this office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Determinations under common-law privacy must be made on a case-by-case basis. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); Open Records Decision No. 373 at 4 (1983). However, information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information). Additionally, we note criminal history information obtained by a law enforcement agency in the process of hiring a peace officer is a matter of legitimate public interest. We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See Open Records Decisions* Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (scope of public employee privacy is narrow).

Upon review, we find a portion of the information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, none of the remaining information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

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[.]" *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). Upon review, we find the information we have marked must be withheld under section 552.102(a) of the Government Code.

Section 552.114(a) of the Government Code excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." *Gov't Code* § 552.114(a). This office has determined the same analysis applies under section 552.114 and the Family

Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. These provisions are applicable only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. *See* 34 C.F.R. § 99.33(a)(2). The department is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an "educational agency" for purposes of FERPA). You do not inform us the department received the submitted transcripts directly from an educational institution. We therefore conclude the department may not withhold the officer's transcripts on the basis of section 552.114 of the Government Code.

You seek to withhold the peace officer's birth certificate pursuant to section 552.115 of the Government Code. Section 552.115(a) provides "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from the requirements of Section 552.021[.]" Gov't Code § 552.115. Section 552.115 only applies to information maintained by the bureau of vital statistics or local registration official. The department maintains the birth certificate, not the Bureau of Vital Statistics or a local registration official; therefore, the department may not withhold any portion of the birth certificate at issue under section 552.115. *See* Open Records Decision No. 338 (1982).

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. Gov't Code § 552.117(a)(2). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.<sup>5</sup>

Section 552.1175 of the Government Code provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure [.]

...

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual

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<sup>5</sup>As our ruling is dispositive, we need not address your argument under section 552a of title 5 of the United States Code against disclosure of the department's federal employer identification number.

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(a)(1), (b). We have marked information that relates to a peace officer who is not employed by the department. Accordingly, to the extent the peace officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have marked pertaining to that peace officer under section 552.1175 of the Government Code. Conversely, if the peace officer at issue does not elect to restrict access to his information in accordance with section 552.1175(b), the marked information pertaining to that peace officer may not be withheld under section 552.1175.

Section 552.119 provides as follows:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph exempt from disclosure under Subsection (a) may be made public only if the peace officer or security officer gives written consent to the disclosure.

*Id.* § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find you have failed to demonstrate any portion of the remaining information is subject to section 552.119 of the

Government Code. Accordingly, no portion of the remaining information may be withheld under section 552.119 of the Government Code.

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, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130.

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 id.* § 552.137(a)-(c). Therefore the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to public disclosure.

Section 552.139(b)(3) of the Government Code provides, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. *Id.* § 552.139(b)(3). Therefore, the department must withhold the photocopies of the police officer's identification card and the police officer's identification badge that we have marked under section 552.139(b)(3) of the Government Code.

In summary, the TCLEOSE number we have marked is not subject to the Act and need not be released. The department must withhold (1) the concealed handgun license information we have marked under section 552.101 in conjunction with section 411.192 of the Government Code; (2) the confidential CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (4) the date of birth we have marked under section 552.102(a) of the Government Code; (5) the information we have marked under section 552.117(a)(2) of the Government Code; (6) the information we have marked pertaining to the peace officer who is not employed by the department under section 552.1175 of the Government Code to the extent the peace officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b); (7) the motor vehicle record information we have marked under section 552.130 of the Government Code; (8) the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure; and (9) the photocopies of the police officer's identification card and the police officer's identification badge that we have marked under section 552.139(b)(3) of the Government Code. The remaining responsive information must be released.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'AKPB' followed by a stylized flourish.

Alia K. Plasencia-Bishop  
Assistant Attorney General  
Open Records Division

AKPB/tch

Ref: ID# 510023

Enc. Submitted documents

c: Requestor  
(w/o enclosures)