



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 22, 2014

Ms. Shannon C. Francis  
Assistant County Attorney  
County of Williamson  
405 Martin Luther King, Box 7  
Georgetown, Texas 78626

OR2014-01319

Dear Ms. Francis:

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# 511711.

The Williamson County Constable, Precinct 3 (the "constable's office") received a request for personnel and internal affair investigation information pertaining to a named individual. We understand the constable's office has redacted portions of the submitted information under section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001) and driver's license numbers pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under

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<sup>1</sup>Open Records Decision No. 670 authorizes all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without the necessity of requesting attorney general decision under section 552.117(a)(2) of the Government Code. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision, including Texas driver's license numbers under section 552.130(a)(1) 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). Thus, the statutory amendment to section 552.130 superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.130(a)(1) in accordance with section 552.130(c), not Open Records Decision No. 684.

sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") identification number. 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 an 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. Accordingly, we find the officer's TCLEOSE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCLEOSE identification 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 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 the information we have marked consists of

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

confidential CHRI and must be withheld under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.<sup>3</sup> However, none of the remaining information you have marked consists of confidential CHRI. Accordingly, none of the remaining information may be withheld on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in relevant part the following:

(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 that is 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. Upon review, we find a portion of the remaining information constitutes a medical record. Accordingly, the constable's office must withhold this information, which we have marked, under section 552.101 in conjunction with the MPA.<sup>4</sup>

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 the 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

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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

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 individual resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the constable's office must withhold the submitted F-5 forms, which we have marked, under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b). We also note that records relating to routine traffic violations are not considered criminal history information. *See id.* § 411.082(2)(B) (criminal history record information does not include driving record information). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage,

mortgage payments, assets, bills, and credit history), 455 at 9 (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow).

However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Further, we note there is a legitimate public interest in an applicant's background and qualifications for government employment, especially where the applicant was seeking a position in law enforcement. *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 (1986) (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 the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the constable's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the constable's office may not withhold the remaining information under section 552.101 on this basis.

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 have marked a date of birth that must be withheld under section 552.102(a) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested

information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You seek to withhold the serial number of a firearm, which you have marked, pursuant to section 552.108(b)(1). You state release of the marked information will interfere with law enforcement or prosecution by divulging a firearm serial number that could be used on illegal firearms or be falsely used in a missing weapons report. Upon review, we find you have demonstrated release of the serial number you have marked would interfere with law enforcement. Therefore, the constable's office may withhold this information under section 552.108(b)(1) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer elects confidentiality under sections 552.024 and 552.1175 of the Government Code.<sup>5</sup> Gov't Code § 552.117(a)(2). We have marked additional information belonging to the named individual under section 552.117(a)(2) of the Government Code, and the constable's office must withhold this information on this basis.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country [or] a motor vehicle title or registration issued by an agency of this state or another state or country[.]" *Id.* § 552.130(a)(1)-(2). Upon review, we find the constable's office must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the officer's TCLEOSE identification number within the submitted information is not subject to the Act and need not be released to the requestor. The constable's office must withhold under section 552.101 of the Government Code: (1) the information we have marked in conjunction with federal law and chapter 411 of the Government Code; (2) the information we have marked in conjunction with the MPA; (3) the marked F-5 forms in

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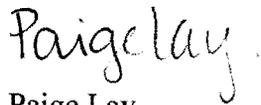
<sup>5</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470.

conjunction with section 1701.454 of the Occupations Code; and (4) the information we have marked in conjunction with common-law privacy. The constable's office may withhold the information you have marked under section 552.108(b)(1) of the Government Code. The constable's office must also withhold: (1) the date of birth we have marked under section 552.102 of the Government Code; (2) the information we have marked under section 552.117(a)(2) of the Government Code; and (3) the information we have marked under section 552.130 of the Government Code. The remaining 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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/bhf

Ref: ID# 511711

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)