



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2014

Mr. Richard R. Gore
Assistant Criminal District Attorney
County of Randall
2309 Russell Long Boulevard, Suite 120
Canyon, Texas 79015

OR2014-08805

Dear Mr. Gore:

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# 525143.

The Randall County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named employee. The sheriff's office states it will release some of the requested information, but claims some of the submitted information is either not subject to the Act or excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed arguments and reviewed the submitted information.

Initially, you inform us the submitted information contains the Texas Commission on Law Enforcement ("commission") identification number of a peace officer.¹ 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 commission identification number is a unique computer-generated number assigned to peace officers for identification in the

¹The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. See Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

commissioner's electronic database, and may be used as an access device number on the commission website. Accordingly, we find the commission identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification numbers are not subject to the Act and the sheriff's office is not required to release them 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." Gov't Code § 552.101. This section encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], 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 commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. Section 1701.454 is applicable only to information submitted to the commission 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.* The submitted information does not contain a Form F-5. Therefore, the sheriff's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government also encompasses section 1701.306 of the Occupations Code, which makes L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the commission confidential. Section 1701.306 provides in relevant part as follows:

(a) The commission may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Id. § 1701.306(a), (b). The sheriff's office must withhold the submitted L-2 and L-3 declarations, which are located on pages twelve and thirteen of the submitted documents, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See id.* §§ 151.001-168.202. 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.

Id. § 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 pages fifty through fifty-eight and sixty through sixty-three of the submitted documents consist of medical records. Accordingly, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with the MPA. However, we conclude you have not established the remaining information contains records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. Thus, the remaining information is not confidential under the MPA, and the sheriff's office may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code 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.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the 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, but 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.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. But driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See* Gov’t Code § 411.082(2)(B) (definition of CHRI does not include driving record information). In addition, 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).

The sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, the remaining information does not contain CHRI for purposes of chapter 411. Therefore, the remaining information is not confidential under chapter 411, and the sheriff’s office may not withhold any information under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 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 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the sheriff’s office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, the remaining

information is not confidential under section 560.003 and the sheriff's office may not withhold it under section 552.101 on that ground.

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. This office has found the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information, *see* Open Records Decision No. 455 (1987); and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is not confidential under common-law privacy, and the sheriff's office may not withhold it under section 552.101 on that ground.

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."² 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). The remaining information contains the dates of birth of the employee at issue and other, unidentified individuals. We are unable to determine whether the unidentified individuals are current or former employees of the sheriff's office. Accordingly, we must rule conditionally. The sheriff's office must withhold the submitted dates of birth under section 552.102(a) of the Government Code if they pertain to current or former employees of the sheriff's office. However, if the individuals at issue are not current or former employees of the sheriff's office, then the sheriff's office may not withhold the dates of birth on that ground.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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 numbers of firearms in Exhibit G pursuant to section 552.108(b)(1). You state release of the serial numbers 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 this information would interfere with law enforcement. Therefore, the sheriff’s office may withhold the serial numbers of firearms in Exhibit G 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 well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.³ Gov’t Code § 552.117(a)(2). The sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

³“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Id. § 552.130(a). The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

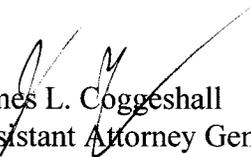
To conclude, the sheriff's office is not required to release the submitted commission identification numbers pursuant to the Act. The sheriff's office must withhold the following: (1) the L-2 and L-3 declarations located on pages twelve and thirteen of the submitted documents under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (2) pages fifty through fifty-eight and sixty through sixty-three of the submitted documents under section 552.101 of the Government Code in conjunction with the MPA; (3) the information we have marked under section 552.101 of the Government Code in conjunction with sections 411.083 and 560.003 of the Government Code and common-law privacy; and (4) the submitted dates of birth under section 552.102(a) of the Government Code if they pertain to current or former employees of the sheriff's office. The sheriff's office may withhold the serial numbers of firearms in Exhibit G under section 552.108(b)(1) of the Government Code. The sheriff's office must withhold the information we have marked under sections 552.117(a)(2) and 552.130 of the Government Code. The sheriff's office 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 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 525143

Enc. Submitted documents

c: Requestor
(w/o enclosures)