



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 4, 2014

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2014-21929

Dear Mr. Grove:

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# 545480.

The Fort Bend County Constable's Office, Precinct 2 (the "constable's office") received a request for all personnel records for a named officer. You claim the requested information is excepted from disclosure under sections 552.101, 552.115, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains the Texas Commission on Law Enforcement (the "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 commissioner's electronic database, and may be used as an

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.

access device number on the commission website. Accordingly, we find the commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification number is not subject to the Act and the constable's office is not required to release it 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. Section 552.101 encompasses section 1701.306 of the Occupations Code, which provides:

(a) [The commission] may not issue a license to a person as an officer or county jailer 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 physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer 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.

Occ. Code § 1701.306(a), (b). Upon review, we find the constable's office must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we marked under section 552.101 in conjunction with section 1701.306 of the Occupations Code.²

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 commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides:

(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.

²This ruling is dispositive of your other arguments against disclosure of this information.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Id. § 1701.454. Section 1701.454 is applicable only to information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. *Id.* § 1701.454(a). Upon review, we find none of the information at issue was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. Therefore, the information at issue is not confidential under section 1701.454 of the Occupations Code, and the constable's office may not withhold it under section 552.101 on that basis. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov't Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Therefore, the constable's office must withhold the fingerprints we have marked in the remaining information under section 552.101 in conjunction with section 560.003 of the Government Code. However, we find no portion of the remaining information at issue contains information subject to section 560.003 of the Government Code, and the constable's office may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by 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 driving record information. *See id.* § 411.082(2)(B). Upon review, we find the constable'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 and federal law. However, we find you have not demonstrated how any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the constable's office may not withhold any of the remaining information under section 552.101 in conjunction with section 411.083 and federal law.

Section 552.101 of the Government Code also encompasses 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. *See id.* at 681–82. The types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally protected by common-law privacy. *See* Open Records Decision No. 455 (1987). We note information obtained by a law enforcement agency in the process of hiring a peace officer is a matter of legitimate public interest. *See, e.g.*, Open Records Decision 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), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of law enforcement employees). We also note information relating to routine traffic violations does not implicate privacy concerns. *Cf.* Gov't Code § 411.081(b). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the constable's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not highly intimate or embarrassing, or there is a legitimate public interest in the information; therefore, the constable's office may not withhold any of the remaining information under section 552.101 of the Government Code.

Section 552.115(a) of the Government Code excepts from disclosure, “[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[.]” *Id.* § 552.115(a). Section 552.115 only applies to information maintained by the bureau of vital statistics or a local registration official. The constable's office is not the bureau of vital statistics or a local registration official. Therefore, the constable's office may not withhold the submitted birth certificate under section 552.115. *See* Open Records Decision No. 338 (1982).

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.”³ 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). Accordingly, the constable’s office must withhold the date of birth we marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2); Open Records Decision No. 622 (1994). Thus, the constable’s office must withhold the information we marked under section 552.117(a)(2) 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* Gov’t Code § 552.130. Accordingly, the constable’s office must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). The information at issue reflects it came into the constable’s office’s possession after September 1, 2003. Accordingly, we conclude the constable’s office must withhold the military discharge record we have marked under section 552.140 of the Government Code.

In summary, the constable’s office is not required to release the submitted commission identification number in response to the request for information. The constable’s office must withhold: (1) the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms we marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (2) the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (3) the information we marked under section 552.101 of the Government Code in conjunction with

³The 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 (1987).

section 411.083 of the Government Code; (4) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (5) the date of birth we marked under section 552.102(a) of the Government Code; (6) the information we marked under section 552.117(a)(2) of the Government Code; (7) the information we marked under section 552.130 of the Government Code; and (8) the military discharge record we marked under section 552.140 of the Government Code. The constable'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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 545480

Enc. Submitted documents

c: Requestor
(w/o enclosures)