



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 5, 2016

Mr. Wesley N. Hinch
County Attorney
Liberty County
P.O. Box 9127
Liberty, Texas 77575

OR2016-02811

Dear Mr. Hinch:

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# 597543.

The Liberty County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a named former deputy. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.115, 552.117, and 552.130 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

We note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:

¹Although you raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception to raise for information the department holds in an employment capacity.

- (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). 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 TCOLE 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 TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released 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 1701.454 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. The submitted information contains an F-5 Report of Separation of Licensee. The information at issue does not indicate the officer whose information is at issue 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 F-5

report under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) of the Government Code 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 id.* § 411.089(b)(1). We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement in 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 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, the remaining information does not constitute confidential CHRI; thus, the sheriff’s office may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 411.083 of the Government 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). Upon review, we find the information we have marked satisfies the standard in *Industrial Foundation*. Thus, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code 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.”² Gov’t Code § 552.102(a). The Texas Supreme Court has 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 sheriff’s office must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.115 excepts from disclosure “[a] birth or death record maintained by the vital statistics unit of the Department of State Health Services or a local registration official[.]” Gov’t Code § 552.115. Section 552.115 is applicable only to information maintained by the vital statistics unit or local registration official. *See* Open Records Decision No. 338 (1982). The submitted birth certificate is maintained by the sheriff’s office, and not by a vital statistics unit or local registration official. Therefore, the sheriff’s office may not withhold it under section 552.115 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. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12. Accordingly, to the extent the individual at issue is currently a licensed peace officer as defined by article 2.12, the sheriff’s office must withhold the information you have marked, and the additional information we have marked under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individual at issue is not currently a licensed police officer as defined by article 2.12 of the Code of Criminal Procedure, this information may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual at issue is not currently a licensed peace officer, then his personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the sheriff's office may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information you have marked, and the additional information we marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the sheriff's office may not withhold this information under section 552.117(a)(1) 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. Upon review, we find the sheriff's office must withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The sheriff's office must withhold the F-5 report under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. 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. The sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office must withhold the date of birth we have marked under section 552.102(a) of the Government Code. To the extent the individual at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the sheriff's office must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. If the individual at issue is not currently a licensed peace officer as defined by article 2.12, to the extent the individual at issue timely requested confidentiality under section 552.024 of the Government Code, the sheriff's office must withhold the information you have marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The sheriff's office must withhold the information you have marked, and the

additional information we have marked, under section 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,



Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/dls

Ref: ID# 597543

Enc. Submitted documents

c: Requestor
(w/o enclosures)