



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 21, 2013

Mr. Timothy B. Kirwin  
Counsel for the City of Mont Belvieu  
Randle Law Office Ltd., L.L.P.  
820 Gessner, Suite 1570  
Houston, Texas 77024-4494

OR2013-02921

Dear Mr. Kirwin:

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# 479265.

The Mont Belvieu Police Department (the "department"), which you represent, received a request for the requestor's personnel file. You state the department will release some of the requested information with redactions made pursuant to sections 552.024 and 552.130(c) of the Government Code.<sup>1</sup> You state the department is withholding L-2 and L-3 forms pursuant to Open Records Decision No. 684 (2009), and has redacted from the submitted information social security numbers of individuals other than the requestor pursuant to section 552.147(b)

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<sup>1</sup>Section 552.117 of the Government Code 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. Gov't Code § 552.117(a). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses to not allow public access to the information. *Id.* § 552.024(c). Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *Id.* § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 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. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 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 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we conclude the department must withhold the CHRI we have marked under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

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 Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”)

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<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b). The requestor has a right, however, to his own social security number. *See generally* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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 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 an F-5 form for the requestor, who resigned from the department, which was submitted to TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, you state the requestor did not resign due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the department must withhold the submitted F-5 form, which we have marked, under section 552.101 in conjunction with section 1701.454 of the Occupations Code. You also seek to withhold a TCLEOSE Form L-1 (Report of Appointment/License Application) and a completed audit report of the department submitted by TCLEOSE to the department under section 1701.454. We note section 1701.454 is applicable only to information submitted to TCLEOSE 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.* § 1701.452. We therefore conclude the department may not withhold the remaining information at issue under section 552.101 on this 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 1703.306 of the Occupations Code. Section 1703.306 provides the following, in pertinent part:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

(1) the examinee or any other person specifically designated in writing by the examinee[.]

Occ. Code § 1703.306(a)(1). We agree the submitted information includes information acquired from a polygraph examination. However, in this instance, the requestor is the polygraph examinee. Thus, the department has the discretion to release the requestor's polygraph information, which we have marked, pursuant to section 1703.306(a)(1). *See*

Open Records Decision No. 481 at 9 (1987) (predecessor to section 1703.306 permitted, but did not require, examination results to be disclosed to examinees). Otherwise, the department must withhold the polygraph information we have marked under section 552.101 in conjunction with section 1703.306(a) of the Occupations Code.

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 conclude the department must withhold the information you have marked, which pertains to individuals other than the requestor, under section 552.102(a).

You state the department has redacted certain information from the submitted information pursuant to section 552.024 of the Government Code.<sup>3</sup> Upon review, we find some of the remaining information may be subject to section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. 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. Accordingly, if the individuals whose information we have marked are currently licensed peace officers, the department must withhold the additional information we have marked under section 552.117(a)(2).

If the individuals whose information is at issue are not currently licensed peace officers, the marked information may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) protects from disclosure the same information as section 552.117(a)(2) for current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former employee only if the individual whose information is at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals whose information we have marked timely requested confidentiality pursuant to

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<sup>3</sup>As previously noted, section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses to not allow public access to the information. Gov’t Code § 552.024(c).

section 552.024, the marked information must be withheld under section 552.117(a)(1) of the Government Code. The department may not withhold the marked information under section 552.117 if the individuals did not make timely elections to keep their information confidential.<sup>4</sup>

You state the department has redacted driver's license numbers of individuals other than the requestor from the submitted information under section 552.130(c) of the Government Code.<sup>5</sup> Section 552.130(a)(1) provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We conclude the department must withhold the additional information we have marked under section 552.130(a)(1) of the Government Code.

In summary, the department must withhold under section 552.101 of the Government Code the CHRI we have marked under section in conjunction with federal law and chapter 411 of the Government Code and the F-5 form we have marked in conjunction with section 1701.454 of the Occupations Code. The department has the discretion to release the requestor's polygraph information we have marked pursuant to section 1703.306(a)(1) of the Occupations Code. The department must withhold the information you have marked under section 552.102(a) of the Government Code. The department must withhold the additional information we have marked under section 552.117(a)(2) of the Government Code if the individuals whose information is at issue are currently licensed peace officers. If the individuals are not currently licensed peace officers, the department must withhold the additional information we have marked under section 552.117(a)(1) of the Government Code if the individuals timely requested confidentiality pursuant to section 552.024. The department must withhold the additional information we have marked under section 552.130 of the Government Code. The department must release the remaining information.<sup>6</sup>

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<sup>4</sup>In the event the individuals' social security numbers are not excepted from disclosure under section 552.117 of the Government Code, we again note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

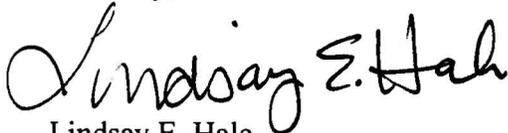
<sup>5</sup>As previously noted, section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e).

<sup>6</sup>Because the information being released in this instance includes information that is confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department must again seek a ruling from this office. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Occ. Code § 1703.306(a)(1); ORD 481 at 4 (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/tch

Ref: ID# 479265

Enc. Submitted documents

c: Requestor  
(w/o enclosures)