



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2014

Ms. Myrna S. Reingold
Galveston County Legal Department
722 Moody 5th Floor
Galveston, Texas 77550-2317

OR2014-09510

Dear Ms. Reingold:

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# 524548.

The Galveston County Sheriff's Office (the "sheriff's office") received a request for information relating to a specified case and the personnel file of the named deputy.¹ You inform us the sheriff's office will redact social security numbers pursuant to section 552.147 of the Government Code.² You claim that some of the submitted information is not subject to the Act. You claim the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.122, 552.130, 552.136, and 552.137 of the

¹We note the sheriff's office received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²We 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. *See* Gov't Code § 552.147(b).

Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

You inform us the submitted information contains a police officer's Texas Commission on Law Enforcement ("TCOLE") 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 the 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 TCOLE number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE number in the submitted information is not subject to the Act and need not be released to the requestor.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. You state the submitted information relates to a pending criminal investigation with the Jamaica Beach Police Department (the "department"). You inform us the department objects to disclosure of the information you have marked because its release would interfere with the detection, investigation, or prosecution of crime. Therefore, the sheriff's office may

³Although you raise section 552.024 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain personal information relating to the official or employee that is held by the employing governmental body. *See Gov't Code § 552.024*. Additionally, although you also raise section 552.1175 of the Government Code, we note the proper exception in this instance is section 552.117(a)(2) of the Government Code because the sheriff's office holds the information at issue in an employment context. Furthermore, although you also raise sections 552.103 and 552.140 of the Government Code as exceptions to disclosure, you provided no arguments regarding the applicability of these sections. Accordingly, we assume you no longer assert these sections. *See id.* §§ 552.301, .302.

withhold the information you have marked on behalf of the department under section 552.108(a)(1) of the Government Code.⁴

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 information protected by other statutes, such as chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. The submitted information contains a CR-3 Texas Peace Officer’s Crash Report. In this instance, the requestor has not provided the sheriff’s office with two of the three pieces of required information pursuant to section 550.065(c)(4). Accordingly, the sheriff’s office must withhold the submitted CR-3 report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.⁵

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which pertains to an L-2 Declaration of Medical Condition form and an L-3 Declaration of Psychological and Emotional Health form required by TCOLE. Section 1701.306 provides in relevant part:

(a) The [TCOLE] 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.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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 L-2 and L-3 declaration forms must be withheld under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.⁶ You also seek to withhold the attachments to the L-3 form pursuant to section 1701.306. We note the language of section 1701.306 only provides for the confidentiality of the declaration. *See id.* § 1701.306(b); *see also* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Accordingly, the attachment to the L-3 form is not made confidential by section 1701.306. Accordingly, the sheriff's office may not withhold this information under section 552.101 on that basis.

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 TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to [TCOLE] 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 [TCOLE] member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information contains F-5 Reports of Separation of Licensee. The information at issue does not indicate the officer at issue resigned or was terminated for reasons other than substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the sheriff's office must withhold the submitted F-5 reports, which you have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

⁶We note the L-2 and L-3 forms at issue were created prior to September 1, 2011. Although section 1701.306 was amended in 2011 by the 82nd Legislature, L-2 and L-3 forms created prior to September 1, 2011 are subject to the former version of section 1701.306, which was continued in effect for that purpose. Additionally, as our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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

- (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. Some of the information at issue consists of reports of the results of drug tests. We note section 159.001 of the MPA defines "patient" as "a person who, to receive medical care, consults with or is seen by a physician." *Id.* § 159.001(3). Because the individual at issue in the reports did not receive medical care in the administration of the drug tests, this individual is not a patient for purposes of section 159.002. However, we find the information we have marked consists of a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created by a physician or someone under the supervision of a physician. Therefore, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code on the basis of the MPA. However, we find none of the remaining information is subject to the MPA, and none of it may be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which governs the public availability of mental health records and provides:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find the information we marked under section 611.002 consists of mental health records or information obtained from mental health records. Therefore, the sheriff’s office must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. However, we find none of the remaining information constitutes mental health records or information obtained from mental health records for the purposes of section 611.002 of the Health and Safety Code. Thus, no portion of the remaining information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 402.083(a) of the Labor Code, which states “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”)] except as provided by this subtitle[.]” Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 ; *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, information in the possession of the sheriff’s office that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although you assert the information you have marked is confidential pursuant to section 402.083, you provide no representation, and the documents do not reflect, that the sheriff’s office received these records from the division. Therefore, you have failed to demonstrate the applicability of section 402.083 to the information at issue, and the sheriff’s office may not withhold it under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses 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* Gov’t Code § 411.083(a). 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 laws with respect to the CHRI it generates. *See id.* 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 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 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. Furthermore, 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* Gov't Code § 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. *Id.* § 411.082(2)(B). Accordingly, the sheriff's office must withhold the confidential CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. However, none of the remaining information consists of CHRI; therefore, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see id.* § 560.001(1) ("biometric identifier" means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the submitted fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff's office must withhold the fingerprints, which you have marked, under section 552.101 of the Government Code in conjunction with section 560.003 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). 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). This office also has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. See Open Records Decision Nos. 562 at 10, 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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. However, you have not demonstrated how the remaining information you marked is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold it under section 552.101 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." *Id.* § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. See *Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of section 552.102, and 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. See *id.* at 346. Accordingly, the sheriff's office must withhold the information you have marked, in addition to the information we have marked, under section 552.102 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from 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 complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers, as that term is defined in article 2.12 of the Code of Criminal Procedure. Accordingly, 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.

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8. You seek to withhold the submitted entrance exam under section 552.122. Having considered your arguments, we find the entrance exam at issue qualifies as a test item under section 552.122(b). Therefore, we conclude the sheriff's office may withhold the entrance exam you have marked under section 552.122 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license 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 most of the information you have marked, and the additional information we have marked, consists of motor vehicle record information. However, you have not demonstrated how some of the information you marked consists of motor vehicle record information. This information, which we have marked for release, may not be withheld under section 552.130 of the Government Code. Accordingly, with the exception of the information we marked for release, the sheriff's office must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). An access device number is one that may be used to 1) obtain money, goods, services, or

another thing of value, or 2) initiate a transfer of funds other than a transfer originated solely by a paper instrument, and includes an account number. *See id.* § 552.136(a) (defining “access device”). Upon review, we find none of the remaining information is subject to section 552.136 of the Government Code and may not be withheld on that basis.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). The sheriff’s office must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure.

In summary, the TCOLE number in the submitted information is not subject to the Act and need not be released to the requestor. The sheriff’s office may withhold the information you have marked on behalf of the department under section 552.108(a)(1) of the Government Code. The sheriff’s office must withhold under section 552.101 of the Government Code (1) the submitted CR-3 report in conjunction with section 550.065(b) of the Transportation Code, (2) the L-2 and L-3 declaration forms in conjunction with section 1701.306 of the Occupations Code, (3) the F-5 report you have marked in conjunction with section 1701.454 of the Occupations Code, (4) the information we have marked on the basis of the MPA, (5) the information we marked in conjunction with section 611.002 of the Health and Safety Code, (6) the CHRI we have marked in conjunction with federal law and chapter 411 of the Government Code, (7) the fingerprints you have marked in conjunction with section 560.003 of the Government Code, and (8) 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 information you have marked, in addition to the information we have marked, under sections 552.102 and 552.117(a)(2) of the Government Code. The sheriff’s office may withhold the entrance exam you have marked under section 552.122 of the Government Code. With the exception of the information we marked for release, the sheriff’s office must withhold the motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The sheriff’s office must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner affirmatively consents to its public disclosure. 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](#), 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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/bhf

Ref: ID# 524548

Enc. Submitted documents

c: Requestor
(w/o enclosures)