



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2014

Ms. Michele Freeland  
Legal Assistant  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2014-15629

Dear Ms. Freeland:

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# 536041 (DPS PIR# 14-2535).

The Texas Department of Public Safety (the "department") received a request for the background investigation of a named peace officer. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to the background investigation of the named peace officer. This ruling does not address the public availability of the information that is not responsive to the request, and the department is not required to release this information in response to this request.

Next, we note the responsive information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number.<sup>1</sup> In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes,

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<sup>1</sup>The 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.

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 TCOLE'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 responsive 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 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 established. *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 also held common-law privacy protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Further, this office has concluded personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, this office has noted the public has a legitimate interest in information relating to those who are involved in law enforcement. *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 legitimate interest in information concerning qualifications and performance of law enforcement employees), 432 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate that the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any of the remaining information under section 552.101 on the basis of common-law privacy.

We note some of the remaining information may be subject to section 552.1175.<sup>2</sup> Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Section 552.1175 encompasses a personal cellular telephone number, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Some of the remaining information pertains to a peace officer not employed by the department. Thus, to the extent the officer whose information is at issue elects to restrict access to his information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175, including the marked cellular telephone number if the cellular service is not paid for by a governmental body. If the peace officer at issue does not elect to restrict access to the information in accordance with section 552.1175(b), the department may not withhold this information under section 552.1175.

We note some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Therefore, the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.1175 of the Government Code, including the marked cellular telephone number if the telephone service is not paid for by a governmental body, to the extent the peace officer elects to restrict access to his information in accordance with section 552.1175(b); and (3) the driver's license information we have marked under section 552.130 of the Government Code. The department 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.

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<sup>2</sup>The 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).

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](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,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/ds

Ref: ID# 536041

Enc. Submitted documents

c: Requestor  
(w/o enclosures)