



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2014

Ms. Cynthia Trevino
Counsel for the City of Copperas Cove
Denton Navarro Rocha Bernal Hyde & Zech, P.C.
2500 West William Cannon, Suite 609
Austin, Texas 78745-5320

OR2014-20564

Dear Ms. Trevino:

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# 543509.

The City of Copperas Cove (the "city"), which you represent, received a request for (1) a specified case file, including the complainant's information; and (2) information pertaining to a named police officer. You state you have released some information to the requestor with redactions made pursuant to section 552.130 of the Government Code and Open Records Decision No. 684 (2009).¹ You further state the city will redact information under sections 552.136(c) and 552.147(b) of the Government Code, as well as personal e-mail addresses and fingerprints pursuant to Open Records Decision No. 684.² You

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

²Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). 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 id.* § 552.147(b). As previously noted, Open Records Decision No. 684 authorizes all governmental bodies to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code and fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision.

claim the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, and 552.119 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information contains a peace 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 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 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.⁴

Section 552.101 of the Government Code excepts "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) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065. Section 550.065(c)(4) provides for the 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). The requestor has not provided the city with two of the three requisite pieces of information specified by the statute. Accordingly, the city must withhold the CR-3 accident reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. However, we find none of the remaining information constitutes an accident report form completed pursuant to chapter 550 of the Transportation Code. Consequently, the city may not withhold any of the remaining information under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 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 that states obtain from the federal government or other states. Open Records Decision No. 565 (1990).

³Although you raise section 552.1175 of the Government Code, we note section 552.117 is the proper exception to raise for information held in an employment context.

⁴As our ruling is dispositive, we do not address your argument to withhold this information.

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 active warrant information or other information relating to one’s current involvement with 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 consists of CHRI, including Federal Bureau of Investigation (“FBI”) numbers that constitute CHRI generated by the FBI. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code.⁵ However, we find you have failed to demonstrate how any of the remaining information constitutes CHRI for purposes of chapter 411 of the Government Code. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of information maintained by DPS concerning the licensure of an individual to carry a concealed handgun. Section 411.192 provides in relevant part:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual’s name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

⁵As our ruling is dispositive, we do not address your other argument to withhold this information.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Id. § 411.192(a)-(b). The information we have marked consists of concealed handgun license information obtained from DPS. In this instance, the requestor is neither the license holder nor a criminal justice agency. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code.

Section 552.101 also encompasses information made confidential by other statutes, such as 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.

Occ. Code § 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, in these instances, the individual is not a patient for purposes of section 159.002. Upon review, 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 city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information is subject to the MPA, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 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 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 [TCOLE] member or other person may not release information submitted under this subchapter.

Id. § 1701.454. The submitted information includes an F-5 Separation of Licensee form that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, you state the named officer did not resign and was not terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city 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 an L-1 Report of Appointment/License Application and F-5 history report under section 1701.454. We note section 1701.454 is applicable only to information submitted to TCOLE 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 form F-5. *See id.* § 1701.452. Therefore, we conclude the city may not withhold the submitted L-1 form or F-5 history report under section 552.101 in conjunction with section 1701.454 of the Occupations Code. *See Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).*

Section 552.101 also encompasses section 58.007(c) of the Family Code, pursuant to which, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Some of the submitted information involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, section 58.007 does not make information related to traffic offenses confidential. *See id.* §§ 51.02(16) (defining traffic offense), .03(a) (delinquent conduct does not include traffic offense), .03(b) (conduct indicating need for supervision does not include traffic offense). Further, we find the remaining information you have marked is personnel information that does not constitute juvenile law enforcement records for purposes of section 58.007(c) of the Family Code. As a result, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Some of the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code). Accordingly, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the city has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986)*

(predecessor statute). Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁶

Section 552.101 encompasses common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is 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 or embarrassing by the Texas Supreme Court in delineated in *Industrial Foundation*. *Id.* at 683. This office has also found an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common-law privacy as encompassed by section 552.101 of the Government Code. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Furthermore, this office has also found common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *c.f.* Fam. Code §§ 58.007(c), 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age when conduct occurred). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated the requestor knows the identity of the individual involved as well as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy. You seek to withhold certain incident reports, which you have marked, in their entirety under section 552.101 in conjunction with common-law privacy. However, you have not demonstrated, nor does it otherwise appear, this is a situation in which the entirety of the reports you have marked must be withheld on the basis of common-law privacy. Accordingly, the city may not withhold the incident reports you have marked in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We also note some of the information you seek to withhold under section 552.101 of the Government Code in conjunction with common-law privacy does not identify an individual to whom the information pertains, and therefore, does not implicate any individual's right to privacy. Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing information of no legitimate public interest. As a result, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

⁶As our ruling is dispositive, we do not address your other argument to withhold this information.

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). Therefore, the city must withhold the information you have marked under section 552.102(a) of the Government Code.

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). Generally, a governmental body claiming section 552.108(a)(1) 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). You state Exhibit F-1, and the information you have marked in Exhibit F-2, relate to pending criminal investigations. Based on your representations and our review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue.

However, as you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which you state you have already released, the city may withhold Exhibit F-1, as well as the information you have marked in Exhibit F-2, under section 552.108(a)(1) 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). Accordingly, the city must withhold the information you have marked in green, as well as the additional information we have marked, under section 552.117 of the Government Code.

You state you have redacted motor vehicle record information under section 552.130(c) of the Government Code.⁷ However, we note the submitted information contains additional motor vehicle record information subject to section 552.130 of the Government Code. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. Upon review, we find the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, the officer's TCOLE identification number in the submitted information is not subject to the Act and need not be released to the requestor. The city must withhold (1) the CR-3 accident reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (2) the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code; (3) the information we have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code; (4) the information we have marked under section 552.101 of the Government Code in conjunction with the MPA; (5) the submitted F-5 form, which we have marked, under section 552.101 in conjunction with section 1701.454 of the Occupations Code; (6) the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (7) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (8) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (9) the information you have marked under section 552.102(a) of the Government Code; (10) the information you have marked in green, as well as the information we have marked, under section 552.117 of the Government Code; and (11) the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. In addition, with the exception of basic information, the city may withhold Exhibit F-1, as well as the information you have marked in Exhibit F-2, under section 552.108(a)(1) of the Government Code. 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/>

⁷As previously noted, section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e).

[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 "Brian Berger". The signature is fluid and cursive, with the first name "Brian" and last name "Berger" clearly distinguishable.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/ac

Ref: ID# 543509

Enc. Submitted documents

c: Requestor
(w/o enclosures)