



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2014

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

OR2014-22487

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# 546303.

The Liberty County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a named deputy. You state the sheriff's office has provided some of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.115, 552.117, 552.1175, and 552.130 of the Government Code.<sup>1</sup> 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 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

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the sheriff's office holds in an employment capacity.

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. We have marked a representative sample of this information for your convenience.

Next, we note the sheriff's office has redacted portions of the information released to the requestor. We understand some of the redactions were made under section 552.117(a)(2) of the Government Code.<sup>2</sup> You have further redacted driver's license information pursuant to section 552.130(c) of the Government Code.<sup>3</sup> However, you have also redacted the deputy's date of birth and personal financial information from the documents released to the requestor. You do not assert, nor does our review of the records indicate, the sheriff's office has been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (discussing standard for issuance of previous determinations). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the sheriff's office should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected 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. *See* Occ. Code §§ 151.001-168.202. 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.

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<sup>2</sup>Section 552.024 of the Government Code permits a governmental body to redact information subject to section 552.117 of the Government Code in certain situations without requesting a decision from this office. *See* Gov't Code § 552.024(c).

<sup>3</sup>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). *See id.* § 552.130(d), (e).

(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 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. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Upon review, we find the information we have marked constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or is maintained by a physician or information obtained from a medical record. Accordingly, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.

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 ("NCIC") or by the Texas Crime Information Center ("TCIC"). 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). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the 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 of the Government Code in conjunction with Government Code chapter 411, subchapter F. 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 criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B).

Upon review, we find portions of the submitted information, which we have marked, consist of CHRI generated by TCIC and NCIC. Accordingly, this information is confidential under section 411.083 and therefore excepted from required public disclosure by section 552.101 of the Government Code.<sup>4</sup>

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 an F-5 Report of Separation of Licensee. The information at issue does not indicate the officer 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 submitted F-5 report, which we have marked, 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 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. This office has found personal financial

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<sup>4</sup>As we reach this conclusion, we need not discuss your privacy claim for this information.

information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 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, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the sheriff's office must withhold this information, which 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."<sup>5</sup> 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). Thus, we find the sheriff's office must withhold the public employee's date of birth we marked under section 552.102(a) of the Government Code.

Section 552.115 provides that a birth record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official is excepted from required public disclosure except that "a birth record is public information and available to the public on and after the 75th anniversary of the date of birth as shown on the record filed with the bureau of vital statistics or local registration official." Gov't Code § 552.115(a). Because section 552.115 of the Government Code only applies to a birth certificate maintained by the bureau of vital statistics or local registration official, the sheriff's office may not withhold the birth certificate at issue pursuant to that provision. *See* Open Records Decision No. 338 (1982).

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). Accordingly, the

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<sup>5</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

We note section 552.1175 of the Government Code may be applicable to some of the remaining information. Section 552.1175 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. *See id.* § 552.1175. Section 552.1175 applies to information pertaining to current or former employees of the Texas Department of Criminal Justice that the sheriff's office does not hold in an employment capacity. *See id.* § 552.1175(a)(3).

Accordingly, provided the information we have marked pertains to individuals who are subject to section 552.1175(a) and the individuals whose information is at issue elect to restrict access to their information in accordance with section 552.1175(b), the sheriff's office must withhold the information we have marked under section 552.1175 of the Government Code. However, to the extent the individuals whose information we have marked are not subject to section 552.1175(a) or no election is made, the sheriff's office may not withhold this information under section 552.1175.

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 id.* § 552.130. Accordingly, the sheriff's office must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.139(b)(3) of the Government Code provides, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. *Id.* § 552.139(b)(3). Upon review, we determine the sheriff's office must withhold the submitted identification badge under section 552.139(b)(3) of the Government Code.

In summary, the submitted TCOLE identification number is not subject to the Act and need not be released to the requestor. The sheriff's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with (1) the MPA, (2) section 411.083 of the Government Code, (3) section 1701.454 of the Occupations Code, and (4) common-law privacy. The sheriff's office must withhold the information we marked under sections 552.102(a), 552.117(a)(2), 552.130, and 552.139 of the Government Code. Provided the information we have marked pertains to individuals who are subject to section 552.1175(a) and the individuals whose information is at issue elect to restrict access to their information in accordance with section 552.1175(b), the sheriff's office must withhold the information we have marked under section 552.1175 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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 546303

Enc. Submitted documents

c: Requestor  
(w/o enclosures)