



February 3, 2015

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2015-02147

Dear Mr. Grove:

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# 552933.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information relating to a named deputy. The sheriff's office indicates it released some of the requested information. We understand the sheriff's office has redacted information pursuant to section 552.130(c) of the Government Code and information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001).¹ The sheriff's office claims the submitted information is excepted

¹We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

from disclosure under sections 552.101 and 552.102 of the Government Code.² We have considered the exceptions the sheriff's office claims 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 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.

Next, we note the sheriff's office has redacted some of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or a statute authorizes the governmental body to make such redactions. *See* Gov't Code § 552.301(a), (e)(1)(D); *see also id.* § 552.130(c). The sheriff's office is not authorized to redact dates of birth without first obtaining a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Therefore, this information must be submitted in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the sheriff's office must not redact information from the information it submits to this office in seeking an open records ruling, unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. *See* Gov't Code § 552.301(e)(1)(D). Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 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 section 1701.306 of the Occupations Code. This section makes confidential L-2 Declaration of Medical Condition and L-3 Declaration of

²Although the sheriff's office does not raise section 552.102 of the Government Code in its brief, we understand it to raise this exception based on its markings.

Psychological and Emotional Health forms required by the TCOLE. Section 1701.306 provides, in part:

(a) [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.

(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 [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Upon review, we find the sheriff's office must withhold the L-2 and L-3 declaration forms we have marked under section 552.101 in conjunction with section 1701.306 of the Occupations 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 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.

Id. § 1701.454. Upon review, we find none of the remaining information is subject to section 1701.454 of the Occupations Code. Therefore, the sheriff's office may not withhold any of the remaining information 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 section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). Section 58.007 provides, in pertinent part, 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). The sheriff's office asserts the remaining information is confidential under section 58.007(c). However, the remaining information does not consist of juvenile law enforcement records. Section 58.007(c) only applies to juvenile law enforcement records. Therefore, the sheriff's office 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 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 also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of particular insurance carrier), 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, we note the public generally has a legitimate interest in information that relates to public employment

and public employees. *See* Open Records Decisions 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), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984). This office has also found common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c).

We note we are unable to determine the age of the alleged juvenile offender at issue in the remaining information. Accordingly, we must rule conditionally for the information pertaining to that juvenile offender. If the alleged juvenile offender at issue was ten years of age or older and under seventeen years of age at the time of the conduct, the information we have marked pertaining to that offender satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation* and must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the alleged juvenile offender at issue was not ten years of age or older and under seventeen years of age at the time of the conduct, we find the information we have marked pertaining to that offender may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Further, we find the remaining information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the sheriff's office has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the sheriff's office may not withhold the remaining information 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[.]" 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 find the sheriff's office must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. The sheriff's office must withhold (1) the L-2 and L-3 declaration forms we have marked under section 552.101 in conjunction with section 1701.306 of the Occupations Code; (2) the information we have marked pertaining to the alleged juvenile

offender at issue, if the alleged juvenile offender was ten years of age or older and under seventeen years of age at the time of the conduct, and the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the date of birth we have marked under section 552.102(a) 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, 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 552933

Enc. Submitted documents

c: Requestor
(w/o enclosures)