



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Mr. Robert J. Davis  
Counsel for Collin County Sheriff's Office  
Matthews, Shiels, Pearce, Knott, Eden & Davis, L.L.P.  
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Dallas, Texas 75251

OR2015-04751

Dear Mr. Davis:

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# 556209 (County File No. 1600.66296).

The Collin County Sheriff's Office (the "sheriff's office"), which you represent, received a request for a named officer's personnel file. You state the sheriff's office has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.119, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit written comments stating why information should or should not be released).

Initially, you state the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-05559 (2009). In that ruling, this office held the sheriff's office must release the information subject to section 552.022 of the Government Code and may withhold the remaining information under section 552.108(a)(1) of the Government Code. In that previous ruling, you provided affidavits from the Collin County District Attorney's Office demonstrating the information at issue pertained to a pending criminal prosecution involving the named officer as a primary witness. You have provided no such affidavit demonstrating the prosecution at issue is still ongoing. Additionally, you inform us the named officer "was unable to determine with certainty whether this Public Information Act request could be associated

with a pending or past criminal investigation or case.” Based on these representations, we find the facts or circumstances on which Open Records Letter No. 2009-05559 was based have changed. Thus, the sheriff’s office may not rely on Open Records Letter No. 2009-05559 as a previous determination and withhold any of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will address the sheriff’s office’s arguments against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by 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 id.* § 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). 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. However, section 411.083 does not apply to active warrant information or other information relating to an individual’s current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find some of the remaining information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the sheriff’s office must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code.<sup>1</sup> However, we find no portion of the remaining information consists of

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<sup>1</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

confidential CHRI, and the sheriff's office may not withhold it under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by section 1701.306 of the Occupations Code. Section 1701.306 makes confidential L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the Texas Commission on Law Enforcement (the "commission").<sup>2</sup> Former section 1701.306 provides, in part:

(a) The commission 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 the commission. A declaration is not public information.

Act of May 17, 1999, 76th Leg., R.S., ch. 388, § 1, 1999 Tex. Gen. Laws 1431, 2219 (current version at Occ. Code §§ 1701.306(a), (b)). The submitted L-3 form was created prior to September 1, 2011. Although section 1701.306 of the Occupations Code was amended in 2011 by the 82nd Legislature, L-2 and L-3 declaration 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. *See* Act of May 30, 2011, 82nd Leg., R.S., ch. 1224, § 7. Therefore, the sheriff's office must withhold the submitted L-3 declaration form, which we have marked, under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code.<sup>3</sup>

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<sup>2</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.

<sup>3</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Section 552.101 of the Government Code also encompasses information made confidential by section 1703.306 of the Occupations Code, which provides,

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a), (b). The remaining information contains information acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who have a right of access to the submitted polygraph information under section 1703.306(a). Accordingly, the sheriff's office must withhold the polygraph information, which we have marked, under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.<sup>4</sup>

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 information not relating to

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<sup>4</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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. 600 (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 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* ORDs 600 at 9 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Further, this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *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) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 392 (1982) (reasons for employee's resignation ordinarily not private). 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.<sup>5</sup> However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the sheriff's office may not withhold any of 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). 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, which is discussed above. *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 court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas

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<sup>5</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

Supreme Court expressly disagreed with *Hubert's* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) 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 also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Having reviewed the information at issue, we have marked information that the sheriff's office must withhold under section 552.102(a) of the Government Code.<sup>6</sup>

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone numbers, emergency contact information, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Upon review, we find the sheriff's office must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body.<sup>7</sup> None of the remaining information consists of a peace officer's home address and telephone numbers, emergency contact information, social security number, or family member information. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.117(a)(2) of the Government Code.

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.<sup>8</sup> *See id.* § 552.130. Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

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<sup>6</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

<sup>7</sup>As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

<sup>8</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.*

Section 552.136 of the Government Code provides, “[n]otwithstanding 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); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, we find the sheriff’s office must withhold the information we have marked under section 552.136 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. You seek to withhold the remaining information under section 552.152 of the Government Code. You state the named officer serves at times in an undercover capacity and release of the remaining information would subject the named officer to a substantial threat of physical harm. Based on your representations and our review, we find you have demonstrated the release of the remaining information, including the cellular telephone number we marked under section 552.117(a)(2) if the service is paid for by a governmental body, would subject the named officer to a substantial threat of harm. Thus, the sheriff’s office must withhold the remaining information, including the cellular telephone number we marked under section 552.117(a)(2) if the service is paid for by a governmental body, under section 552.152 of the Government Code.<sup>9</sup>

In summary, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The sheriff’s office must withhold the submitted L-3 declaration form we have marked under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code. The sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. 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. The sheriff’s office must withhold the information we have marked under section 552.102(a) of the Government Code. The sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the sheriff’s office may only withhold the marked cellular telephone number if the cellular telephone service is not paid for by a governmental body. The sheriff’s office

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<sup>9</sup>As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

must withhold the information we have marked under section 552.130 of the Government Code and the information we have marked under section 552.136 of the Government Code. The sheriff's office must withhold the remaining information, including the cellular telephone number we marked under section 552.117(a)(2) if the service is paid for by a governmental body, under section 552.152 of the Government Code.

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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

Ref: ID# 556209

Enc. Submitted documents

c: Requestor  
(w/o enclosures)