



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 26, 2015

Ms. Sandra Garcia
Assistant General Counsel
Houston Community College
3100 Main Street
Houston, Texas 77002

OR2015-05818

Dear Ms. Garcia:

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# 557572.

Houston Community College (the "college") received a request for the applications the college has on file for two specified college police officers. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.117, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requested 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

¹Although you raise sections 552.107, 552.108, and 552.111 of the Government Code, you provide no explanation of how these exceptions are applicable to the submitted information. Accordingly, we do not address sections 552.107, 552.108, and 552.111 in our ruling. See Gov't Code §§ 552.301, .302. Further, although 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.

understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the 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 requested 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 must address the college's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). In this instance, the college received the request for information on December 12, 2014. You state the college was closed for business from December 22, 2014 through January 2, 2015. This office does not count the date the request was received or the dates the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. The college does not inform us it was closed for business on any of the remaining days at issue. Accordingly, the ten-business-day deadline under section 552.301(b) was January 9, 2015. However, the college requested a ruling from our office in an envelope meter-marked January 16, 2015. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the college failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the college claims section 552.103 for the submitted information, that exception is discretionary in nature and may be waived. Accordingly, section 552.103 does not constitute a compelling reason to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the college may not withhold any portion of the submitted information under section 552.103 of the Government Code. However, the college also claims sections 552.101, 552.102, 552.117, and 552.130 of the Government Code for the

submitted information. Furthermore, we note section 552.137 of the Government Code is applicable to part of the submitted information.² These sections can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of these sections to the submitted information.

The college asserts the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 411.00755 of the Government Code. Section 552.101 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 section 411.00755(b) of the Government Code which states, in pertinent part, “The personnel records of a commissioned officer of the [Texas Department of Public Safety] may not be disclosed or otherwise made available to the public[.]” *Id.* § 411.00755(b). Thus, section 411.00755 excepts from disclosure the personnel records of commissioned Texas Department of Public Safety officers. The officers at issue here are employed by the college and are not commissioned officers of the Texas Department of Public Safety for the purposes of section 411.00755. Accordingly, the college may not withhold any portion of the submitted information under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note records relating to routine traffic violations are not considered criminal history information. *Id.* § 411.082(2)(B) (criminal history record information does not include driving record information). We also 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). Upon review, we find the information we have marked constitutes confidential CHRI. Accordingly, the college must withhold the information we have marked

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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, the college must withhold the information we have marked under section 552.102(a) of the Government Code.

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). Section 552.117(a) 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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, however, it is unclear whether the college employees whose information is at issue are currently licensed peace officers as defined by article 2.12. Accordingly, to the extent the college employees are currently-licensed peace officers as defined by article 2.12, the college must withhold the information we have marked under section 552.117(a)(2) of the Government Code, provided the cellular telephone service is not paid for by a governmental body. Conversely, if the college employees at issue are not currently-licensed police officers as defined by article 2.12, the information we have marked may not be withheld under section 552.117(a)(2) of the Government Code.

If the college employees at issue are not currently-licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Section 552.117 is applicable to a cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-7. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the college may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on

which the request for this information was made. Accordingly, to the extent the college employees whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the college must withhold the information we have marked under section 552.117(a)(1) of the Government Code, provided the cellular telephone service is not paid for by a governmental body. Conversely, to the extent the college employees at issue did not timely request confidentiality under section 552.024, the college may not withhold the marked information under section 552.117(a)(1).

Section 552.130 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 Gov't Code § 552.130.* Accordingly, the college must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the college must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the officer's TCOLE identification number is not subject to the Act and need not be released to the requestor. The college 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 college must withhold the information we have marked under section 552.102(a) of the Government Code. If the college employees at issue are currently-licensed peace officers as defined by article 2.12, then the college must withhold the information we have marked under section 552.117(a)(2); however, the personal cellular telephone numbers may only be withheld if the cellular telephone service is not paid for by a governmental body. If the college employees at issue are not currently-licensed peace officers, then, to the extent the employees at issue timely requested confidentiality pursuant to section 552.024, the college must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the personal cellular telephone numbers may only be withheld if the cellular telephone service is not paid for by a governmental body. The college must withhold the information we have marked under section 552.130 of the Government Code. The college must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner

affirmatively consents to its public disclosure. The college must release the remaining information.³

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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 557572

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the remaining information includes social security numbers. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).