



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 27, 2015

Ms. Crystal Koonce  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2015-08027

Dear Ms. Koonce:

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# 561233.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for all records pertaining to a named former deputy. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, 552.136, 552.137, and 552.140 of the Government Code. 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 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.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state the information you have marked relates to a closed criminal case that did not result in conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to the information you have marked.

However, 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 Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the sheriff's office may withhold the information you have marked under section 552.108(a)(2) of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses information other statutes make confidential. The submitted information contains L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. These forms are confidential under section 1701.306 of the Occupations Code, which is encompassed by section 552.101 of the Government Code. Section 1701.306 provides the following:

(a) [TCOLE] may not issue a license to a person 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

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<sup>1</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

(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 blood test or other medical test.

(b) An agency hiring a person for whom a license 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). Therefore, the sheriff's office must withhold the submitted L-2 and L-3 declaration forms, which you have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>2</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 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 remaining information includes information that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Furthermore, the information at issue does not indicate the named officer 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 information you have marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov't Code § 560.003; *see*

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<sup>2</sup>As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

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

*id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the fingerprints at issue under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff’s office must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, we find no portion of the remaining information you have marked contains information subject to section 560.003, and the sheriff’s office may not withhold any of the remaining information you have marked under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as 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. 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 portions of the submitted information, which we have marked, consist of CHRI that is confidential under section 411.083. Thus, the sheriff’s office must withhold the information we have marked under section 552.101 in conjunction with section 411.083 of the Government Code.<sup>4</sup> However, we find you have not demonstrated how any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the sheriff’s office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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

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 highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545.

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, 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. However, we find you have not demonstrated how the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 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 agree the sheriff's office must withhold the date of birth you have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and 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)(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 and pager numbers, provided the cellular telephone or pager 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). We also note a post office box number is not a “home address” for purposes of section 552.117(a). *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 552.117 is to protect public employees from being harassed at home). In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12. If the individuals are currently licensed peace officers as defined by article 2.12, then the sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the marked cellular telephone and pager numbers may be withheld only if a governmental body does not pay for the cellular telephone and pager service. Further, if the individuals are no longer licensed peace officers as defined by article 2.12, then the information we have marked may not be withheld under section 552.117(a)(2) of the Government Code. Upon review, however, we find the remaining information you have marked does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information of a peace officer currently or formerly employed by the sheriff’s office, and the sheriff’s office may not withhold the remaining information you marked under section 552.117(a)(2).

If the individuals whose information is 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 number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. Gov’t Code § 552.117(a)(1). As noted above, section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager 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(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The sheriff’s office may only withhold the information at issue under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals made a timely election under section 552.024, then the sheriff’s office must withhold the information we have marked under section 552.117(a)(1) of the Government Code.<sup>5</sup> However, the marked cellular telephone and pager numbers may be withheld only if a governmental body does not pay for the cellular telephone and pager service. If the individuals whose information is at issue did not make a timely election under section 552.024, then their information may not be withheld under section 552.117(a)(1) of the Government Code. However, we find the remaining information you marked does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information of a current or former employee of the sheriff’s office, and the sheriff’s office may not withhold the remaining information you marked under section 552.117(a)(1).

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<sup>5</sup>As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

Section 552.1175 of the Government Code protects certain information held by a governmental body in a non-employment capacity and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). Upon review, we find most of the remaining information you have marked under section 552.1175 relates to peace officers who are employed by other police departments. Accordingly, if the officers at issue elect to restrict access to their marked information in accordance with section 552.1175(b), then with the exception of the information we have marked for release, the sheriff's office must withhold the remaining information you have marked under section 552.1175 of the Government Code. Conversely, if the officers at issue do not elect to restrict access to their information in accordance with section 552.1175(b), the marked information may not be withheld 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(a). Accordingly, the sheriff's office must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

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. *See Open Records Decision No. 684 at 9 (2009)*. Accordingly, the sheriff's office must withhold the insurance policy number you have marked under section 552.136 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* Gov’t Code § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The information you have marked under section 552.137 either consists of e-mail addresses maintained by governmental entities for their officials or employees or does not consist of an e-mail address for purposes of section 552.137. Therefore, the sheriff’s office may not withhold the information you have marked under section 552.137 of the Government Code.

Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). You seek to withhold DD-214 forms. You do not inform us when the sheriff’s office came into possession of these forms. Therefore, we must rule conditionally. If the sheriff’s office came into possession of the forms on or after September 1, 2003, then the sheriff’s office must withhold the forms under section 552.140 of the Government Code. If the sheriff’s office received the forms before September 1, 2003, then the sheriff’s office may not withhold the forms pursuant to section 552.140 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. With the exception of basic information, the sheriff’s office may withhold the information you have marked under section 552.108(a)(2) of the Government Code. The sheriff’s office must withhold (1) the information you have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (2) the information you have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (3) the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (4) the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (5) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (6) the date of birth you have marked under section 552.102(a) of the Government Code. If the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the sheriff’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individuals at issue are not currently licensed peace officers and made a timely election under section 552.024 of the Government Code, then the sheriff’s office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the marked cellular telephone and pager numbers may be withheld only if a governmental body does not pay for

the cellular telephone and pager service. The sheriff's office must withhold (1) the information you have marked under section 552.1175 of the Government Code, except for the information we have marked for release, if the individuals to whom the information pertains elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code; (2) the information you have marked under section 552.130 of the Government Code; and (3) the information you have marked under section 552.136 of the Government Code. If the sheriff's office came into possession of the DD-214 forms you have marked on or after September 1, 2003, then the sheriff's office must withhold the forms under section 552.140 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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/cbz

Ref: ID# 561233

Enc. Submitted documents

c: Requestor  
(w/o enclosures)