



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2015

Ms. Monica L. Perez
Counsel For The City of Socorro
Mounce, Green, Myers, Safi, Paxson & Galatzan
P.O. Box 1977
El Paso, Texas 79999-1977

OR2015-11813

Dear Ms. Perez:

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# 567132.

The City of Socorro (the "city"), which you represent, received a request for information regarding a named police officer, information regarding a specified incident involving the named police officer, and policies and procedures regarding investigating a DWI and videotaping of suspects. You state some information will be released to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.130, 552.136, 552.140, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹Although you also raise sections 552.1175, 552.1425, and 552.152 of the Government Code, you have provided no arguments regarding the applicability of these sections to the submitted information. Accordingly, we understand you no longer claim these exceptions. *See* Gov't Code §§ 552.301, .302. Further, although you also raise section 552.101 of the Government Code in conjunction with the doctrine of constitutional privacy, we note you have provided no arguments supporting the applicability of that doctrine. Accordingly, we also assume you no longer assert the doctrine of constitutional privacy. *See id.* Finally, although you also raise section 552.101 of the Government Code in conjunction with section 552.102 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act.

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.

Next, you contend, and we agree, the information you have submitted as "background information" in Exhibit 4 is not responsive to the present request for information. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information to the requestor.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses federal tax return information made confidential by section 6103(a) of title 26 of the United States Code. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as a taxpayer's "identity, the nature, source, or amount of . . . income." *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the city must withhold the submitted W-4 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.² However, we find the city has failed to demonstrate how the remaining information at issue consists of tax return information that is confidential under section 6103(a) of title 26 of the United States Code. Accordingly, the city may not withhold the remaining information at issue under section 552.101 on that basis.

Section 552.101 of the Government Code also 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[.]" Gov't Code § 411.00755(b). Thus, section 411.00755 excepts

²As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

from disclosure the personnel records of commissioned Texas Department of Public Safety officers. The officer at issue here is employed by the city and is not a commissioned officer of the Texas Department of Public Safety for the purposes of section 411.00755. Accordingly, the city may not withhold any portion of the remaining information at issue 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. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter F of chapter 411 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 only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. Upon review, we find the information we have marked under chapter 411 constitutes confidential CHRI. Therefore, the city must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.³ However, we find the city has failed to demonstrate how any portion of the remaining information at issue constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses information protected by 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].” *Id.* § 560.003; *see 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 submitted fingerprint 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

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

city must withhold the fingerprint we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by 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, the following:

(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.

(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 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 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). Upon review, we find the information we have marked is confidential under the MPA. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, the remaining information you seek to withhold includes a report of the results of a drug test. Section 159.001 of the MPA defines a “patient” as “a person who, to receive medical care, consults with or is seen by a physician.” Occ. Code § 159.001(3). Because the individual at issue did not receive medical care in the administration of the drug test, this individual is not a patient for purposes of section 159.002. Upon review, we find you have not demonstrated any of the remaining information at issue is confidential under the MPA. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by section 1701.306 of the Occupations Code, which makes confidential L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. Section 1701.306 provides in part the following:

(a) The [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 the [TCOLE]. 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)). Therefore, the city must withhold the submitted L-2 and L-3 declaration forms, which we have marked, under section 552.101 of the Government Code in conjunction with former section 1701.306 of the Occupations Code.⁴ However, we find no portion of the remaining information is confidential under former section 1701.306 and the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code on that basis.

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 the TCOLE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the [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.

⁴We note the L-2 and L-3 declaration forms at issue were 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.

Occ. Code § 1701.454. Upon review, we find no portion of the remaining information was submitted to the TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 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 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, e.g.*, Open Records Decision Nos. 545 (1990) (common-law privacy protects 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). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold this information, which 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 any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any portion of the remaining information at issue 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). Accordingly, the city must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). The city states the submitted video in Exhibit 4 relates to a pending criminal prosecution.

Based on this representation, we conclude the release of the submitted video in Exhibit 4 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the submitted video in Exhibit 4 under section 552.108(a)(1) of the Government Code.⁵

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. Upon review, we find the city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.⁶ However, we find no portion of the remaining information is confidential pursuant to section 552.117(a)(2) of the Government Code, and the city may not withhold any of the remaining information at issue on that basis.

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 city must withhold the motor vehicle record information we 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. Upon review, we find the city must withhold the information we have marked under section 552.136 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

⁵As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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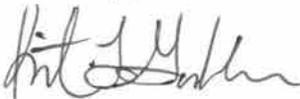
or in accordance with a court order. *See id.* § 552.140(a)-(b). The city came into possession of the submitted military discharge record after September 1, 2003. Accordingly, we conclude the city must withhold the military discharge record we have marked under section 552.140 of the Government Code. However, we find no portion of the remaining information is confidential under section 552.140 of the Government Code, and the city may not withhold it on that basis.

In summary, the submitted TCOLE identification number is not subject to the Act and need not be released to the requestor. The city must withhold under section 552.101 of the Government Code: 1) the information we have marked in conjunction with section 6103(a) of title 26 of the United States Code, 2) the information we have marked in conjunction with section 411.083 of the Government Code and federal law, 3) the fingerprint we have marked in conjunction with section 560.003 of the Government Code, 4) the information we have marked in conjunction with the MPA, 5) the information we have marked in conjunction with former section 1701.306 of the Occupations Code, and 6) the information we have marked in conjunction with common-law privacy. The city must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. The city may withhold the submitted video in Exhibit 4 under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under sections 552.117(a)(2), 552.130, 552.136, and 552.140 of the Government Code. The city must release the remaining responsive 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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 567132

Enc. Submitted documents

c: Requestor
(w/o enclosures)