



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2015

Ms. Kristen N. Lee
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2015-13691

Dear Ms. Lee:

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# 570633 (C.A. File No. 15PIA0152).

The Harris County Constable's Office, Precinct 1 (the "constable's office") received a request for all employment records relating to a named employee during a specified period of time. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, 552.130, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). 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 552.101 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 of the Government Code encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. *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 follows:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

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).

Upon review, we find the submitted information contains W-4 forms which constitute confidential tax return information under section 6103(a). Thus, the constable's office must withhold the submitted W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form in this instance would be "for purposes other than enforcement" of the referenced federal statutes. Accordingly, we conclude the submitted I-9 forms, which we have marked, are confidential pursuant to section 1324a of title 8 of the United States Code; the constable's office must withhold this information under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 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. 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 a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 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 the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the constable's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the constable'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[.]”¹ 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 constable’s office must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.² Gov’t Code § 552.117(a)(2). Accordingly, the constable’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

The remaining submitted information may also contain the personal telephone number of a peace officer who is not employed by the constable’s office. Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *Id.* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* ORD 506 at 5-7. Thus, to the extent the telephone number in the submitted information belongs to a licensed peace officer not employed by the constable’s office who elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code, the constable’s office must withhold the telephone number under section 552.1175 of the Government Code. However, a cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s or 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. Gov’t Code § 552.130(a). Upon review, we find the constable’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

²Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

We note the remaining information contains information subject to section 552.137 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). Upon review, we find the constable’s office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to their public disclosure.

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 state release of the remaining submitted information could bring harm to the named employee. Upon review, we find you have failed to demonstrate the release of the information at issue would subject any individual to a substantial threat of harm. Accordingly, none of the submitted information may be withheld under section 552.152 of the Government Code.

In summary, the TCOLE identification number contained in the submitted information is not subject to the Act and need not be released to the requestor. The constable’s office must withhold the submitted W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The constable’s office must withhold the submitted I-9 forms, which we have marked, pursuant to section 552.101 of the Government code in conjunction with section 1324a of title 8 of the United States Code. The constable’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The constable’s office must withhold the date of birth we have marked under section 552.102(a) of the Government Code. The constable’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the information we have marked relates to a licensed peace officer who elects to restrict access to their information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however, any cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. The constable’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The constable’s office must withhold the e-mail addresses we have marked under

section 552.137 of the Government Code, unless the owner affirmatively consents to their public disclosure. The constable's office 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 570633

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).