



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2015

Mr. J. Eric Magee
Counsel for the Victoria County Sheriff's Office
Allison, Bass & Magee, L.L.P.
402 West 12th Street
Austin, Texas 78701

OR2015-14463

Dear Mr. Magee:

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# 571844.

The Victoria County Sheriff's Office (the "sheriff's office"), which you represent, received a request for a named individual's employee file. We note you have released some information to the requestor. You state you will withhold social security numbers under section 552.147(b) of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.115, 552.117, 552.1175, 552.130, 552.136, and 552.137 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. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

¹Section 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 under the Act. Gov't Code § 552.147(b).

(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 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 note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of "information that is also contained in a public court record[.]" unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(17). The submitted court-filed document is subject to section 552.022(a)(17) and must be released unless the document is confidential under the Act or other law. Although the sheriff's office asserts this information is confidential under section 552.101 of the Government Code in conjunction with common-law privacy, we note information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). As such, the sheriff's office may not withhold the information that is subject to section 552.022(a)(17) under section 552.101 in conjunction with common-law privacy. However, the sheriff's office also raises sections 552.101, 552.102, 552.117, 552.1175, and 552.130 of the Government Code for the court-filed document, which make information confidential under the Act. Thus, we will address the applicability of these arguments to this information. Additionally, we will

address the sheriff's office's remaining arguments for the information that is not subject to section 552.022.

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. Section 552.101 of the Government Code encompasses chapter 411 of the Government Code, 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* Gov't Code § 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 further note records relating to routine traffic violations are not considered criminal history information. *Cf. id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Lastly, 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). Upon review, we find the information we have marked constitutes confidential CHRI that must be withheld under section 411.083 of the Government Code and federal law. Accordingly, 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 and federal law. However, we find you have not demonstrated how any portion of the remaining information at issue 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 at issue under section 552.101 of the Government Code on that basis.

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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* 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). Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b). We also note that records relating to routine traffic violations are not considered criminal history information. *See id.* § 411.082(2)(B). However, criminal history information provided by a peace officer as part of an application for employment with the sheriff's office was not compiled by any governmental body. Further, when a peace officer's criminal history information is compiled in the course of the officer's pre-employment screening, there is a legitimate public interest in the information. Additionally, this office has noted 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), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees). Although references to the previous salaries of an applicant for public employment may be considered highly intimate or embarrassing, we find there is a legitimate public interest in this information as it pertains to the applicant's employment qualifications and background. *See* ORD 455 at 9 (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question"). We further note the home addresses and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See id.* at 7 (home addresses, telephone numbers, dates of birth not protected under privacy).

Upon review, we find portions of the submitted information, which we have marked, satisfy 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 in

conjunction with common-law privacy.² However, the sheriff's office has not demonstrated any of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, no portion of the remaining information at issue may be withheld under section 552.101 on that basis.

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 sheriff's office must withhold the date of birth you have marked, as well as the date of birth we have marked, in the remaining information under section 552.102(a) of the Government Code. However, we find none of the remaining submitted information is subject to section 552.102 of the Government Code and the sheriff's office may not withhold any of the remaining information on that basis.

Section 552.115 excepts from disclosure "[a] birth or death record maintained by the vital statistics unit of the Department of State Health Services or a local registration official[.]" *See* Act of May 21, 2015, 84th Leg., R.S., S.B. 1485, § 1 (to be codified as an amendment to Gov't Code § 552.115). Section 552.115 is applicable only to information maintained by the vital statistics unit or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because the submitted birth certificate is maintained by the constable's office, it may not be withheld under section 552.115 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer complies with section 552.024 of the Government Code or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note section 552.117(a)(2) protects a peace officer's personal cellular telephone or pager number only if the officer pays for the cellular telephone or pager service with his or her personal funds. *See* Open Records Decision Nos. 670 at 6 (2001) (Gov't Code § 552.117(a)(2) excepts from disclosure peace officer's cell phone or pager number if officer pays for cell phone or pager service), 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 note the information at issue pertains to detention officers with the sheriff's office. Upon review, 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 numbers if the cellular telephone

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

services are not paid for by a governmental body.³ However, we find no portion of the remaining information is subject to section 552.117 of the Government Code, and the sheriff's office may not withhold any of the remaining information at issue on that basis.

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. *See* Gov't Code § 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). Upon review, we find none of the remaining information is subject to section 552.1175, and the sheriff's office may not withhold any of the remaining information 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(a). The sheriff's office must withhold the motor vehicle record information you have marked, as well as the additional 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. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the sheriff's office must withhold the information we 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). Gov't Code § 552.137(a)-(c). Upon review, we find the remaining information does not contain an e-mail address of a member of the public subject to section 552.137(a) of the Government Code and thus, none of the remaining information may be withheld on that basis.

In summary, the TCOLE identification number is not subject to the Act and need not be released to the requestor. 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 and federal law and common-law privacy. The sheriff's office must

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

withhold the date of birth you have marked, as well as the date of birth we have marked, under section 552.102 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 numbers if the cellular telephone services are not paid for by a governmental body. The sheriff's office must withhold the information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.136 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, 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/bhf

Ref: ID# 571844

Enc. Submitted documents

c: Requestor
(w/o enclosures)