



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 31, 2015

Mr. Ruhee G. Leonard  
Assistant District Attorney  
County of Waller  
645 12th Street  
Hempstead, Texas 77445

OR2015-18121

Dear Mr. Leonard:

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# 578851.

The Waller County Sheriff's Office (the "sheriff's office") received a request for information pertaining to named personnel and manuals and similar documents pertaining to specified topics. The sheriff's office states it will release some of the requested information, but claims the submitted information is either not subject to the Act or excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

The sheriff's office asserts some of the submitted information does not consist of public information that is subject to disclosure under the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, "public information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

---

<sup>1</sup>We understand the sheriff's office to raise section 552.111 and the deliberative process privilege based on its arguments.

- (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.

*Id.* § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

*Id.* § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

Attachment D pertains to evaluations of trainees of the sheriff's office. The sheriff's office asserts this information does not constitute public information under section 552.002. However, we find the sheriff's office maintains this information in connection with the transaction of its official business. Thus, Attachment D constitutes "public information" as defined by section 552.002(a). Accordingly, this information is subject to the Act and must be released, unless it falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. Therefore, we will address your argument against its disclosure under the Act.

The submitted information contains the Texas Commission on Law Enforcement (“commission”) identification numbers of peace officers.<sup>2</sup> 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 commission 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 commission website. Accordingly, we agree the commission identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the submitted commission identification numbers are not subject to the Act and the sheriff’s office is not required to release them to the requestor.

We next note, as discussed in part above, Attachment D contains completed evaluations. Section 552.022(a)(1) of the Government Code reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). The sheriff’s office asserts this information is excepted from release under section 552.111 of the Government Code and the deliberative process privilege. However, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision No. 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the sheriff’s office may not withhold the evaluations in Attachment D under section 552.111 and the deliberative process privilege.

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 section encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under

---

<sup>2</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

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

- (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], 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 commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. Section 1701.454 is applicable only to information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. *Id.* § 1701.454(a). The only report or statement found in subchapter J is a Form F-5. *See id.* § 1701.452. The submitted information contains F-5 Separation of Licensee forms that were submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. The F-5 forms do not reflect the officers to whom these forms apply were 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 submitted F-5 forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, the remaining information that the sheriff's office seeks to withhold under section 1701.454 does not consist of F-5 forms. Therefore, the remaining information is not confidential under section 1701.454 of the Occupations Code, and the sheriff's office may not withhold it under section 552.101 on that basis. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which provides in relevant part as follows:

- (a) The commission 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
  - (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 the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). The information at issue contains L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms, which are required by the commission. The sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These statutes make confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. We understand Waller County is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. Therefore, the sheriff's office must withhold the submitted telephone numbers and addresses of 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 261.201(a) of the Family Code provides, which provides as follows:

[T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Upon review, we find some of the submitted information was used or developed in investigations under chapter 261. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes

of section 261.201). Thus, the information at issue is within the scope of section 261.201 of the Family Code. The sheriff's office does not indicate it has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the sheriff's office must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information, which 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.

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[.]"<sup>3</sup> Gov't Code § 552.102(a). The Texas Supreme Court has 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). The sheriff's office must withhold the information we have marked under section 552.102(a) of the Government Code.

Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). This section is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records

---

<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department's use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

The sheriff's office asserts release of the serial numbers of firearms in Attachment E could interfere with undercover work by the sheriff's office. The sheriff's office also asserts release of the information in Attachment E "could interfere with law enforcement records by undermining the validity of the serial numbers of the firearms to a law enforcement agency as opposed to outside forgery." Upon review, we find the sheriff's office has established release of the serial numbers at issue would interfere with law enforcement. Therefore, the sheriff's office may withhold this information, which we have marked, under section 552.108(b)(1) of the Government Code. However, we conclude the sheriff's office has not established the release of any of the remaining information at issue would interfere with law enforcement. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.108(b)(1).

Section 552.111 of the Government Code excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of

advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

The sheriff's office asserts the remaining information in Attachment D is excepted from disclosure under section 552.111 and the deliberative process privilege because its release would discourage open and frank discussion and opinions on employee training and performance evaluations. However, we find this information is related to routine administrative and personnel matters and does not pertain to policymaking of the sheriff's office. Therefore, we conclude the sheriff's office has failed to demonstrate how the deliberative process privilege applies to the information at issue. Consequently, the sheriff's office may not withhold any of the remaining information in Attachment D under section 552.111 of the Government Code.

Section 552.117 of the Government Code may be applicable to some of the remaining information. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 or section 552.1175 of the Government Code.<sup>4</sup> Gov't Code § 552.117(a)(2). It is unclear whether the employees at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the sheriff's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the employees at issue are currently licensed peace officers as defined by article 2.12. If the employees at issue are no longer licensed peace officers as defined by article 2.12, then the sheriff's office may not withhold this information under section 552.117(a)(2).

---

<sup>4</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

Nevertheless, if the employees are no longer licensed peace officers, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, 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 of the Government Code. *See id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees are no longer currently licensed peace officers as defined by article 2.12 and they timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold the information at issue under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employees are no longer currently licensed as peace officers as defined by article 2.12 and they did not timely request confidentiality under section 552.024, then the sheriff's office may not withhold the information at issue under section 552.117(a)(1).<sup>5</sup>

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 Gov't Code* § 552.130. The sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

To conclude, the sheriff's office is not required to release the submitted commission identification numbers. The sheriff's office must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with sections 1701.306 and 1701.454 of the Occupations Code, section 261.201 of the Family Code, and common-law privacy; (2) the submitted telephone numbers and addresses of 9-1-1 callers under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code; (3) the information we have marked under sections 552.102 and 552.130 of the Government Code; (4) the information we have marked under section 552.117(a)(2) of the Government Code if the employees at issue are currently

---

<sup>5</sup>To the extent the submitted social security numbers are not excepted from disclosure under section 552.117, we note 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 under the Act. *Gov't Code* § 552.147(b).

licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure; however, if the employees at issue are no longer currently licensed peace officers as defined by article 2.12 and they timely requested confidentiality under section 552.024 of the Government Code, then the sheriff's office must withhold this information under section 552.117(a)(1) of the Government Code. The sheriff's office may withhold the information we have marked under section 552.108(b)(1) 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 578851

Enc. Submitted documents

c: Requestor  
(w/o enclosures)