



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 16, 2015

Mr. James K. Crain, III  
Counsel for the City of Cuero  
Law Offices of Crain & Sheppard  
P.O. Box 427  
Cuero, Texas 77954

OR2015-21775

Dear Mr. Crain:

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# 583373.

The City of Cuero (the "city"), which you represent, received a request for the personnel file of a former employee. You claim the submitted information is excepted from disclosure under sections 552.102, 552.117, and 552.1175 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.

Initially, we note the submitted information includes an officer's Texas Commission on Law Enforcement ("TCOLE") identification number.<sup>2</sup> In Open Records Decision No. 581 (1990),

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<sup>1</sup>Although you also raise section 552.119 of the Government Code, we note you have not submitted any photographs of a peace officer. Therefore, this ruling will not address that exception. You also raise sections 552.024, 552.301, and 552.305 of the Government Code; however, we note these sections are not exceptions to disclosure. *See* Gov't Code §§ 552.024, .301, .305.

<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.

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 the officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officer's TCOLE number does not constitute public information under section 552.002 of the Government Code. Therefore, the officer's TCOLE 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." Gov't Code § 552.101. Section 552.101 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 the 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 blood test or other medical test.

(b) An agency hiring a person for whom a license as 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.

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 section 1701.306 of the Occupations Code.

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 [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 [TCOLE] member or other person may not release information submitted under this subchapter.

*Id.* § 1701.454. The submitted information contains an F-5 Report of Separation of Licensee. The information at issue does not indicate the officer at issue resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the submitted F-5 report, which we have marked, under section 552.101 of the Government Code 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. Additionally, this office has 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. 600 (1992) (personal financial information includes choice of particular insurance carrier), 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 city 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.” 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). The city must withhold the information we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code 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.<sup>3</sup> *See* Gov't Code § 552.117(a)(2).

In this instance, it is unclear whether the former employee whose information is at issue is currently a licensed peace officer as defined by article 2.12. Accordingly, to the extent the former employee is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the former employee at issue is not currently a licensed peace officer as defined by article 2.12, the information we marked may not be withheld under section 552.117(a)(2) of the Government Code. However, we find none of the remaining information constitutes the home address or telephone number, emergency contact information, social security number, or family member information of a peace officer under section 552.117(a)(2). Thus, the city may not withhold any portion of the remaining information under section 552.117(a)(2).

If the former employee at issue is not currently a licensed peace officer, then his 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 numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Thus, to the extent the former employee whose information we marked timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the former employee at issue did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

Section 552.1175 provides, in part, the following:

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<sup>3</sup>Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

(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). We have marked information that relates to two peace officers not employed by the city. Section 552.1175(b) also applies to the personal cellular telephone number of an individual who falls within the scope of section 552.1175(a), provided the cellular telephone 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). Accordingly, to the extent the information at issue pertains to a peace officer who elects to restrict access to the marked information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. However, if the marked telephone number is a cellular telephone number, the city must withhold it under section 552.1175 only if a governmental body does not pay for the cellular telephone service. Conversely, if the officers at issue do not elect to restrict access to their information in accordance with section 552.1175(b), the city may not withhold the information we have marked under section 552.1175. Additionally, if the telephone number we have marked is a cellular telephone number and the telephone service is paid for by a governmental body, the telephone number may not be withheld under section 552.1175. In any event, we find you have failed to demonstrate the remaining information is subject to section 552.1175 and it may not be withheld on that basis.

We note the remaining information contains information subject to section 552.130 of the Government Code, which 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.<sup>4</sup> Gov't

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code. § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information we have marked under section 552.130 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 city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, 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 section 1701.306 of the Occupations Code. The city must withhold the submitted F-5 report we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent the former employee is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. If the former employee is not a currently licensed peace officer, to the extent the former employee whose information we marked timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code. To the extent the information we have marked pertains to a peace officer who elects to restrict access to the marked information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code. If the marked telephone number is a cellular telephone number, the city must withhold it under section 552.1175 only if a governmental body does not pay for the cellular telephone service. The city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The remaining information must be released.

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,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader". The signature is written in black ink and is positioned above the typed name.

Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 583373

Enc. Submitted documents

c: Requestor  
(w/o enclosures)