



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2015

Ms. Erin D. Thorn
Assistant District Attorney
County of Hidalgo
100 North Closner, Room 303
Edinburg, Texas 78539

OR2015-24879

Dear Ms. Thorn:

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# 588846 (File No. 2015-0096-DA.CO).

The Office of Hidalgo County Constable, Precinct 4 (the "constable's office") received a request for all job applications submitted to the constable's office since January 1, 2015. The constable's office states it will provide some of the requested information to the requestor, but claims the submitted information is either not subject to the Act or excepted from disclosure under sections 552.101, 552.102, 552.1175, 552.137, and 552.139 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

The submitted information contains the Texas Commission on Law Enforcement (“commission”) identification numbers of peace officers.² 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:

(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 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 find 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 constable’s office is not required to release them 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.*

²The 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.

§ 552.101. This section encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. 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 law with respect to CHRI it generates. *Id.* 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 subchapters E-1 and F of chapter 411 of the Government Code. *See Gov’t Code* § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Upon review, we find Exhibit J is confidential under section 411.083. Therefore, the constable’s office must withhold Exhibit J under section 552.101 of the Government Code in conjunction with section 411.083 of the Government 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 the commission under 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. Exhibit H does not contain a Form F-5. Therefore, the information in Exhibit H is not confidential under section 1701.454 of the Occupations Code, and the constable’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 552.102(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). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. Section 552.101 of the Government Code encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. See *id.* at 348. Accordingly, if the applicants at issue are employees of the constable’s office, then the constable’s office must withhold their dates of birth under section 552.102(a) of the Government Code. However, we find none of the remaining responsive information is subject to section 552.102(a) of the Government Code, and the constable’s office may not withhold any of the remaining information on that basis.

Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure. *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Accordingly, if the applicants at issue are not employees of the constable’s office, then the constable’s office must withhold their dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the constable’s office may not withhold any portion of the remaining responsive information under section 552.101 in conjunction with common-law privacy.

Section 552.102(b) of the Government Code excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public-school employee[.]” Gov’t Code § 552.102(b). The applicants at issue are not professional public school employees. Accordingly, the constable’s office may not withhold any of the remaining information under section 552.102(b) of the Government Code.

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.³ *See id.* § 552.130. The constable’s office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁴

Section 552.139(b)(3) of the Government Code provides, “a photocopy or other copy of an identification badge issued to an official or employee of a governmental body” is confidential. *Id.* § 552.139(b)(3). Therefore, the constable’s office must withhold the identification badge we have marked under section 552.139(b)(3) of the Government Code.⁵ However, the remaining responsive information is not confidential under section 552.139(b)(3), and the constable’s office may not withhold it on that ground.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and 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 section 552.024 or section 552.1175 of the Government Code.⁶ *Id.* § 552.117(a)(2). The constable’s office must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the peace officers at issue are employees of the constable’s office. However, if the peace officers whose information is at issue are not employed by the constable’s office, then the constable’s office may not withhold this information on that ground. Nevertheless, section 552.1175 may be applicable to this information.

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

⁴As our ruling is dispositive, we do not address the constable’s office’s other arguments to withhold this information.

⁵As our ruling is dispositive, we do not address the constable’s office’s other arguments to withhold this information.

⁶“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

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 id.* § 552.1175. Therefore, if the peace officers whose information is at issue are not employed by the constable's office, then the constable's office must withhold the information we have marked under section 552.1175 if they elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. However, the constable's office may not withhold this information under section 552.1175 if the peace officers at issue do not elect to restrict access to this information in accordance with section 552.1175(b).⁷

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). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The constable's office informs us no member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the constable's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

To conclude, the submitted commission identification numbers are not subject to the Act and the constable's office is not required to release them to the requestor. The constable's office must withhold Exhibit J under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and the information we have marked under sections 552.130, 552.137, and 552.139(b)(3) of the Government Code. The constable's office must withhold the submitted dates of birth under section 552.102(a) of the Government Code if the applicants at issue are employees of the constable's office, or under section 552.101 of the Government Code in conjunction with common-law privacy if the applicants at issue are not employees of the constable's office. The constable's office must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the peace officers at issue are employees of the constable's office; however, if the peace officers whose information is at issue are not employed by the constable's office, then the constable's office must withhold this information under section 552.1175 of the Government Code if they elect to restrict access to this information in accordance with

⁷Regardless of the applicability of section 552.117 or 552.1175, 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).

section 552.1175(b) of the Government Code. The constable'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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/som

Ref: ID# 588846

Enc. Submitted documents

c: Requestor
(w/o enclosures)