



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 7, 2015

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2015-25586

Dear Ms. Lentz:

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# 589382.

The Williamson County Sheriff's Office (the "sheriff's office") received a request for (1) the personnel files of two named individuals, excluding social security numbers, home addresses, and home telephone numbers, and (2) the blood withdrawal protocol used by the sheriff's office. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.122, 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 requestor specifically excludes social security numbers and home addresses and telephone numbers from the scope of the request. Accordingly, these types of information are not responsive to the instant request.<sup>1</sup> This ruling does not address the public availability of non-responsive information, nor is the sheriff's office required to release non-responsive information to this requestor.

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<sup>1</sup>As our determination is dispositive, we need not address your arguments against disclosure of this information.

Next, we note you have not submitted any information pertaining to one of the named individuals. Therefore, to the extent information responsive to this aspect of the request exists, we assume you have released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Next 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:

(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). 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. This section encompasses information section 611.002 of the Health and Safety Code, which provides in part as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find the information we have marked consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Therefore, the sheriff’s office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses information made confidential by section 1701.306 of the Occupations Code. Section 1701.306 makes confidential L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by the commission. Section 1701.306 provides, in part:

(a) [the commission] 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 physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer 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.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Occ. Code § 1701.306(a), (b)). Therefore, the sheriff's office must withhold the submitted L-2 and L-3 declaration forms you 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 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.

*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 sheriff's office must withhold the submitted F-5 report you have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *See* Gov't Code § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the fingerprints we have marked in the submitted information constitute biometric identifiers for purposes of section 560.003 of the Government Code. Accordingly, the sheriff's office must withhold the fingerprints we marked under section 552.101 in conjunction with section 560.003 of the Government Code. However, we find none of the remaining information you marked constitutes biometric identifiers for purposes of section 560.003 of the Government Code. Thus, the sheriff's office may not withhold the remaining information you marked on this basis.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime

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

Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F or subchapter E-1 of the Government Code. *See* Gov’t Code § 411.083. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See 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. We note section 411.083 does not apply to active warrant information or other information relating to an individual’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). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked consists of confidential CHRI. 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.<sup>4</sup> However, the remaining information at issue does not constitute confidential CHRI. Accordingly, the sheriff’s office may not withhold any of the remaining information at issue 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 has considered the applicability of section 552.102, and 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, 348 (Tex. 2010). Upon review, we find the sheriff’s office must withhold the date of birth you have marked, and the additional instances we have marked, under section 552.102(a) of the Government 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

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 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. 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). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 432 at 2 (1984) (scope of public employee privacy is narrow).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we have marked for release, the sheriff's office must withhold the information you have marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) 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. Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). 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 sheriff's office 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. The submitted information contains the election form completed by the individual whose information is at issue and it reflects the individual timely elected to keep his information confidential. We agree most of the information you have marked, in addition to the information we have marked, are subject to section 552.117(a)(1) of the Government Code. However, we note some of the information you have marked, which we have marked for release, does not constitute the personal information of the employee whose information is at issue. Accordingly, except for the information we have marked for release, the sheriff's office must withhold the responsive information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service.

Section 552.122(b) of the Government Code exempts from public disclosure "[a] test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold the submitted Corrections Medical Officer Examination you marked, as well as the answers to the submitted exam questions, under section 552.122 of the Government Code. You state this exam is used to test the individuals who apply for a medical officer position with the Williamson County Jail. Based on your representations and our review, we agree the exam you have marked is a "test item" under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to the exam questions would reveal the questions themselves. Therefore, the sheriff's office may withhold the exam and the answers you have marked under section 552.122(b) of the Government Code.

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 sheriff's office must withhold the information you have marked, and the additional motor vehicle record 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. Upon review, we find the sheriff’s office must withhold the information you 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). *See id.* § 552.137(a)-(c). Upon review, we find the sheriff’s office must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

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 (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, (2) the submitted L-2 and L-3 declaration forms you have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, (3) the submitted F-5 report you have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code, (4) the fingerprints we marked under section 552.101 in conjunction with section 560.003 of the Government Code, (5) the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code, (6) the information you have marked and we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, except for the information we have marked for release, (7) the date of birth you have marked, and the additional instance we have marked, under section 552.102(a) of the Government Code, and (8) the responsive information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code, except for the information we have marked for release; however, the marked cellular telephone number may be withheld only if a governmental body does not pay for the cellular telephone service. The sheriff’s office may withhold the exam and the answers you have marked under section 552.122(b) of the Government Code. The sheriff’s office must withhold the information you have marked and we have marked under section 552.130 of the Government Code. The sheriff’s office must withhold the information you have marked under section 552.136 of the Government Code. The sheriff’s office must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The sheriff’s office must release the remaining responsive 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,

A handwritten signature in cursive script that reads "Britni Ramirez".

Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 589382

Enc. Submitted documents

c: Requestor  
(w/o enclosures)