



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 8, 2015

Ms. Erin D. Thorn  
Assistant District Attorney  
Hidalgo County District Attorney's Office  
100 East Cano Street  
Edinburg, Texas 78539

OR2015-25669

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# 589703 (Hidalgo County File No. 2015-0105-DA.SO).

The Hidalgo County Sheriff's Office (the "sheriff's office") received a request for the personnel file of a specified employee of the sheriff's office. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Initially, we note the submitted information includes an 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;

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the sheriff's office holds in an employment capacity.

(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 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as 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.

Occ. Code § 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,

which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.<sup>2</sup> However, we find the remaining information at issue does not consist of information that was submitted to TCOLE pursuant to subchapter J of chapter 1701 of the Occupations Code. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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 constitute biometric identifiers for purposes of section 560.003 of the Government Code. Thus, the sheriff's office must withhold the marked fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code. However, the sheriff's office has failed to demonstrate any of the remaining information consists of a biometric identifier for the purposes of section 560.003. Therefore, the sheriff's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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.” *Id.* § 552.102(a). We understand you to 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, the sheriff's office must withhold the

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

information we have marked under section 552.102(a) of the Government Code. However, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code. Accordingly, the sheriff's office may not withhold any of the remaining information on that basis.

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 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 number of the firearm in the submitted information would interfere with law enforcement or prosecution by giving individuals or criminals the ability to clone illegal firearms with serial numbers registered to the sheriff's office in order to commit crimes or to be falsely included in a missing weapons report. Upon review, we find the sheriff's office has established release of the serial number 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 552.117(a)(2) of the Government Code exempts 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) exempts 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 also note section 552.117 only applies to information held by a governmental body in an employment context. 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 number if the cellular telephone service is not paid for by a governmental body. 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 552.130 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.<sup>3</sup> *See* Gov't Code § 552.130(a). Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the officer's TCOLE number is not subject to the Act and need not be released to the requestor. The sheriff's office 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. The sheriff's office must withhold the marked fingerprints under section 552.101 in conjunction with section 560.003 of the Government Code. The sheriff's office must withhold the information we have marked under section 552.102(a) 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 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 number if the cellular telephone service is not paid for by a governmental body. The sheriff's office must withhold the motor vehicle record information we have

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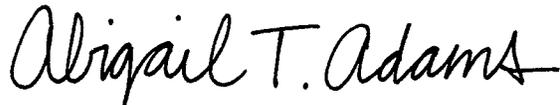
<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

marked under section 552.130 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,

A handwritten signature in black ink that reads "Abigail T. Adams". The signature is written in a cursive style with a large initial 'A'.

Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 589703

Enc. Submitted documents

c: Requestor  
(w/o enclosures)