



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 7, 2016

Mr. Ignacio Perez  
Assistant City Attorney for the City of Nolanville  
Bojorquez Law Firm, P.C.  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2016-07850

Dear Mr. Perez:

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# 604677.

The City of Nolanville (the "city"), which you represent, received a request for all documents relating to training, performance evaluations, complaints, internal affairs investigations, and any disciplinary investigations or imposition of discipline for two named city police officers. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.102, 552.117, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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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 department holds in an employment capacity. *See* Gov't Code §§ 552.117, .1175. Further, although you do not raise sections 552.102 and 552.147 of the Government Code in your brief, we understand you to do so based on your markings in the submitted information.

We note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number.<sup>2</sup> 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 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. Accordingly, we find the named individual'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.

Next, you assert the submitted school transcripts are subject to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records

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<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.

ruling process under the Act.<sup>3</sup> Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). We note FERPA applies only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. *See* 34 C.F.R. § 99.33(a)(2). We further note the city is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an “educational agency” for purposes of FERPA). Moreover, you do not explain the requested transcripts were transferred directly to the city from an educational institution. We therefore conclude the city may not withhold the transcripts at issue on the basis of FERPA.

Section 552.102(b) of the Government Code exempts from public 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 individual at issue here is not a professional public school employee. Accordingly, the city may not withhold any of the submitted information under section 552.102(b) of the Government Code.

Section 552.102(a) of the Government Code exempts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” *Id.* § 552.102(a). The Texas Supreme Court held section 552.102(a) exempts 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). Upon review, we find the city must withhold the date of birth of the city employee, which we have marked, under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code exempts 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. *See* Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information you have marked and the additional information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.147 of the Government Code provides “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). The

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<sup>3</sup>A copy of this letter may be found on the Office of the Attorney General’s website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

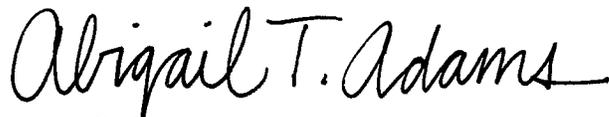
city may withhold the social security number you have marked under section 552.147 of the Government Code.

In summary, the TCOLE number is not subject to the Act and need not be released to the requestor. The city must withhold the date of birth of the city employee we have marked under section 552.102(a) of the Government Code. The city must withhold the information you have marked and the additional information we have marked under section 552.117(a)(2) of the Government Code. The city may withhold the social security number you have marked under section 552.147 of the Government Code. The city 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,



Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 604677

Enc. Submitted documents

c: Requestor  
(w/o enclosures)