

TEXAS DEPARTMENT OF PUBLIC SAFETY

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www.dps.texas.gov



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COMMISSION
STEVEN P. MACH, CHAIRMAN
A. CYNTHIA LEON
JASON K. PULLIAM

July 12, 2019

Via Email

Ty Clevenger
tyclevenger@yahoo.com

RE: Public Information Request for records regarding Trooper Robert Tyson Metzger for May 29 through May 31, 2016 (PIR # 19-2873)

Mr. Clevenger:

The Department received your above-referenced request on July 2, 2019. Please find enclosed the information the Department located in response to Item #5 of your request. These records are provided to you at no cost.

We have redacted the social security number of one or more living individuals excepted from disclosure by section 552.147 of the Government Code, as section 552.147(b) authorizes a governmental body to redact this information without the necessity of requesting a decision from the attorney general.

We have also redacted the date of birth of one or more living individuals. The date of birth of any living person is excepted from required public disclosure under common-law privacy. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 Tex. App. LEXIS 5228, at *10 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.) The Department has received a previous determination from the Attorney General's office allowing us to redact the dates of birth of living individuals from the records we are providing to you without requesting a ruling. Open Records Letter Ruling 2015-27249; see Gov't Code § 552.301(a); see also Open Records Decision No. 673 at 7 (2001).

In addition, the information you requested contains information that relates to:

- a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; or
- a motor vehicle title or registration issued by an agency of this state or another state or country; or
- a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

This information is confidential under section 552.130 of the Texas Government Code. Our office is prohibited by law from releasing this information to you, and therefore we have removed this information from the enclosed information we are providing to you. Normally, we must request a

ruling from the Texas Attorney General before we can withhold any of the information you requested. However, section 552.130 allows us to withhold this specific information without requesting a ruling from the attorney general. You have the right to appeal our decision to withhold this information from you. Instructions for appeal are at the end of this letter. If you do not want to appeal, you do not need to do anything else. Please note that we are only withholding the specific categories of information that are confidential under section 552.130. We will process the rest of your request for information in accordance with the terms of the Public Information Act.

With respect to Items #1-4 of your request, the Department has conducted a good faith search for any and all information related to your request and has not been able to locate any responsive records. This may be due to the Department's records retention policy, which mandates the destruction of Department records in accordance with our state-approved retention schedule. *See* Gov't Code § 441.187. Accordingly, even if the Department generated the requested record, we no longer maintain a copy. Please note that records indicating the time shifts of a commissioned officer are also protected from disclosure by section 411.00755 of the Government Code which limits the information that can be released from the personnel record of a commissioned officer of the Department of Public Safety.ⁱ Section 411.00755(b) states that personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except for the twelve categories of information listed in subsections (b)(1)-(12) that must be disclosed.ⁱⁱ In addition, the Department has received a previous determination from the Attorney General's office allowing us to withhold the excepted information without requesting a ruling. [Open Records Letter Ruling 2010-12863](#); *see* Gov't Code§ 552.301(a); *see also* Open Records Decision No. 673 at 7 (2001). As none of the release provisions in section (c) are applicable in this instance, only the information specified in subsections (b)(1)-(12) is available to you at this time. Open Records Decision No. 684 (2009); *see also* Gov't Code§ 552.301(a); Open Records Decision No. 673 at 7 (2001).

If you have any questions regarding this request, please contact the Media and Communications at media@dps.texas.gov. Thank you.

Cordially,

A handwritten signature in dark ink, appearing to read "ML Calcote". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

ML Calcote
Assistant General Counsel

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How to Appeal the Withholding of Information Under 552.130 Without an AG Ruling Requested

If you wish to appeal the withholding of information discussed on the previous page, you must send the following to the attorney general:

- (1) a signed, written statement indicating your wish to appeal the withholding of information;
- (2) the name of the governmental body that withheld information from you;
- (3) the date you made your original request for information; and
- (4) a copy of your original request for information, or if you are unable to provide a copy, a description of your original request for information.

You may also submit written comments stating why you think the information should be released to you, but you are not required to do so.

Send your appeal by mail to the attorney general at:

Open Records Division
PO Box 12548
Austin, Texas 78711-2548

Within forty-five business days after receiving all of the above-listed items necessary to file your appeal, the attorney general will issue a written ruling on the matter. You will receive a copy of this ruling in the mail.

ⁱ A “personnel record” is defined in section 411.0075(a)(1) as:

any letter, memorandum, or document maintained by the department that relates to a commissioned officer of the department, including background investigations, employment applications, employment contracts, service and training records, requests for off-duty employment, birth records, reference letters, letters of recommendation, performance evaluations and counseling records, results of physical tests, polygraph questionnaires and results, proficiency tests, the results of health examinations and other medical records, workers’ compensation files, the results of psychological examinations, leave requests, requests for transfers of shift or duty assignments, commendations, promotional processes, demotions, complaints and complaint investigations, employment-related grievances, and school transcripts.

ⁱⁱ The personnel records of a commissioned officer of the department may not be disclosed or otherwise made available to the public, except the department shall release in accordance with Chapter 552:

- (1) any letter, memorandum, or document relating to:
 - (A) a commendation, congratulation, or honor bestowed on the officer for an action, duty, or activity that relates to the officer's official duties; and
 - (B) misconduct by the officer, if the letter, memorandum, or document resulted in disciplinary action;
- (2) the state application for employment submitted by the officer, but not including any attachments to the application;
- (3) any reference letter submitted by the officer;
- (4) any letter of recommendation for the officer;
- (5) any employment contract with the officer;
- (6) any periodic evaluation of the officer by a supervisor;
- (7) any document recording a promotion or demotion of the officer;
- (8) any request for leave by the officer;
- (9) any request by the officer for transfers of shift or duty assignments;
- (10) any documents presented to the commission in connection with a public hearing under Section 411.007(f);
- (11) the officer's:
 - (A) name;
 - (B) age;
 - (C) dates of employment;
 - (D) positions held; and
 - (E) gross salary; and
- (12) information about the location of the officer's department duty assignments.