



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2010

Mr. James T. Jeffrey, Jr.
Law Offices of Jim Jeffrey
For the City of Burleson
2214 Park Springs Boulevard
Arlington, Texas 76013

OR2010-17337

Dear Mr. Jeffrey:

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# 400140.

The City of Burleson (the "city"), which you represent, received a request for information relating to a former city police officer, including (1) his resignation or retirement letter; (2) records of disciplinary actions or performance reviews; (3) correspondence, e-mails, or notes outlining allegations of wrongdoing by the city or city or county officials; and (4) e-mails sent on the officer's city e-mail account during a specified time interval. You inform us the city has no information responsive to part 3 of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.1175, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note the city did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) provides that a governmental body must provide a copy of the written request for information to this office no later than the fifteenth business day after the date of its receipt of the request. *See id.* § 552.301(e)(1)(B). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure under section 552.302 of the Government Code and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You inform us the city received the instant request for information on August 30, 2010; therefore, the city's fifteen-business-day deadline under section 552.301(e) was September 21. As of the date of this decision, the city has not provided a copy of the request for information to this office.² Thus, the city has not complied with section 552.301(e)(1)(B), and the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The city seeks to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Because the purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the city's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and the city may not withhold any of the submitted information on that basis. The city also seeks to withhold all or portions of the submitted information under sections 552.103 and 552.108 of the Government Code, which are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not provide compelling reasons for non-disclosure under section 552.302. Therefore, the city may not withhold any of the submitted information under section 552.101 in conjunction with the common-law informer's privilege, section 552.103, or section 552.108. We note the city's other claims under sections 552.101, 552.117, 552.1175, and 552.137 of the Government Code can provide compelling reasons for non-disclosure. We also note some of the submitted information falls within the scope of sections 552.130 and 552.136 of the Government Code,

²Our description of the request is based on other information you provided in requesting this decision.

which also can provide compelling reasons for non-disclosure.³ Accordingly, we will address sections 552.101, 552.117, 552.1175, 552.130, 552.136, and 552.137.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). *See* 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. *See id.* § 164.502(a).

This office has addressed the interplay of the Privacy Rule and the Act. In Open Records Decision No. 681 (2004), we noted that section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted that the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We therefore held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App. — Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the city may withhold protected health information from the public only if the information is confidential under other law or an exception in subchapter C of the Act applies.

Section 552.101 of the Government Code encompasses section 550.065(b) of the Transportation Code, which states that except as provided by subsection (c) and (e), accident

³This office will raise sections 552.130 and 552.136 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *See id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* The submitted information includes crash reports completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has not provided the city with two of the three specified items of information. Therefore, the city must withhold the crash reports we have marked pursuant to section 550.065(b) of the Transportation Code.

Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). We also have concluded that when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released on receipt of the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). The medical records we have marked must be withheld under section 159.002(b) of the MPA, unless the city receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

Criminal history record information ("CHRI") obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions."⁴ *Id.* § 411.082(2). Federal law governs the dissemination of CHRI obtained from the National Crime Information Center network. Federal regulations prohibit the release to the general public of CHRI maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). The federal regulations allow each state to follow its own individual law with respect to CHRI that it generates. *See* ORD 565 at 10-12; *see generally* Gov't Code ch. 411 subch. F. Although sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *See id.* § 411.089(b). We note that because the laws that govern the dissemination of information obtained from the NCIC or TCIC are based on both law enforcement and privacy interests, a deceased individual's CHRI obtained from a criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. We also note a criminal justice agency may disclose to the public CHRI "that is related to the offense for which a person is involved in the criminal justice system." Gov't Code § 411.081(b). The city must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and subchapter F of chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under

⁴We note the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety under subchapter C of chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2).

controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of Fam. Code tit. 3). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. We have marked law enforcement records relating to a juvenile offender the city must withhold under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

We note the city seeks to withhold information relating to a 911 caller. Chapter 772 of the Health and Safety Code authorizes the development of local emergency communication districts. Sections 772.118, 772.218 and 772.318 of the Health and Safety Code are applicable to emergency 911 districts established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers that are furnished by a service supplier confidential. *Id.* at 2. The city has not demonstrated it is part of an emergency communication district established under chapter 772 of the Government Code or that any information at issue relating to a 911 call was furnished by a service supplier. We therefore conclude the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with sections 772.118, 772.218 or 772.318 of the Health and Safety Code.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have concluded that common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394

(1983); *cf.* Fam. Code § 58.007. Additionally, we have concluded that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). We note information relating to routine traffic violations or to an offense for which an individual is currently involved in the criminal justice system does not implicate privacy concerns. *Cf. Gov't Code § 411.081(b)*.

This office also has determined that common-law privacy encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 545 at 4 (1990)* ("In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities"), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

The city generally contends some of the submitted information is protected by common-law privacy on the basis of *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). The city also contends release of some of the information could "cast[] [the former officer] in a false light." In *Morales v. Ellen*, the court applied common-law privacy to records of an investigation of alleged sexual harassment in the workplace. As the submitted information does not include records of such an investigation, the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy on the basis of *Morales v. Ellen*. Likewise, because false light privacy is not an actionable tort in Texas, none of the submitted information may be withheld on the basis that its release might place an individual in a false light. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994); *Open Records Decision No. 579 (1990)*.

We note the submitted information is related, for the most part, to a law enforcement officer formerly employed by the city and the officer's official conduct. The public generally has a legitimate interest in such information. *See Open Records Decision Nos. 562 at 10 (1990)* (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact that public employee

received less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 6 (1986) (public has genuine interest in information concerning law enforcement employee's qualifications and performance and circumstances of his termination or resignation). We also note privacy is a personal right that lapses at death; thus, information relating to a deceased individual is not protected by common-law privacy. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

We have marked portions of the submitted documents, including medical information, personal financial information, and information relating to a juvenile offender, that are highly intimate or embarrassing and not a matter of legitimate public interest. The city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. We find that none of the remaining information that pertains to a living individual is highly intimate or embarrassing and a matter of no legitimate public concern. We therefore conclude the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address and telephone number 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 officer complies with sections 552.024 or 552.1175 of the Government Code. Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We note section 552.117(a)(2) is applicable to a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his or her personal funds. *See* Open Records Decision No. 670 at 6 (2001); *but see* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to Gov't Code § 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). We also note a post office box number is not a "home address" for the purposes of section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). The information we have marked under section 552.117 must be withheld under section 552.117(a)(2) to the extent the information consists of the home address, home telephone number, social security number, or family member information of a peace officer employed by the city or an officer's personal cellular telephone number if the officer pays for the cellular telephone service with his or her personal funds.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that these types of information be kept confidential under section 552.024. *See* Gov't Code §§ 552.024, .117. Section

552.117(a)(1) also is applicable to an official or employee's personal cellular telephone number if the cellular telephone service is paid for with the individual's personal funds. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. The information we have marked under section 552.117 must be withheld under section 552.117(a)(1) to the extent the information consists of the home address, home telephone number, social security number, or family member information of a current or former city official or employee who timely requested confidentiality for the information under section 552.024, including a personal cellular telephone number if the cellular telephone service is paid for with the official or employee's personal funds.

Section 552.1175 of the Government Code also encompasses information relating to a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.1175(a). Section 552.1175 provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(a)-(b). Section 552.1175 encompasses a peace officer's personal cellular telephone or facsimile number if the cellular telephone service or facsimile number is paid for with the officer's personal funds. The information we have marked under section 552.1175 must be withheld to the extent the information consists of a peace officer's home address, home telephone number, social security number, or family member information or a personal cellular telephone or facsimile number if the officer pays for the cellular telephone service or facsimile number with his or her personal funds, if the officer elects to restrict access to the marked information in accordance with section 552.1175(b).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state, a motor vehicle title or registration issued by an agency of this state, or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. *See id.* § 552.130(a)(1)-(3). The city must withhold the Texas driver's license, motor vehicle and personal identification information we have marked under section 552.130.

Section 552.136 of the Government Code provides that "[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 that an insurance policy number is an access device for purposes of this exception. The city must withhold the bank account, bank routing and insurance policy numbers we have marked under section 552.136.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure or the e-mail address falls within the scope of section 552.137(c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses of members of the public that do not appear to fall within the scope of section 552.137(c). The city must withhold the marked e-mail addresses under section 552.137, unless the owner of an e-mail address has affirmatively consented to its public disclosure.

We note some of the remaining information at issue appears to be protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1977); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary: (1) the marked crash reports must be withheld pursuant to section 550.065(b) of the Transportation Code; (2) the marked medical records must be withheld under section 159.002(b) of the MPA, unless the city receives the required consent for release under sections 159.004 and 159.005 of the MPA; (3) the marked CHRI must be withheld under section 552.101 of the Government Code in conjunction with federal law and

subchapter F of chapter 411 of the Government Code; (4) the marked juvenile law enforcement records must be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (5) the information marked under section 552.101 in conjunction with common-law privacy must be withheld; (6) the information we have marked under section 552.117 of the Government Code must be withheld under section 552.117(a)(2) to the extent the information consists of the home address, home telephone number, social security number, or family member information of a peace officer employed by the city or an officer's personal cellular telephone number if the officer pays for the cellular telephone service with his or her personal funds; (7) the information we have marked under section 552.117 must be withheld under section 552.117(a)(1) to the extent the information consists of the home address, home telephone number, social security number, or family member information of a current or former city official or employee who timely requested confidentiality for the information under section 552.024 of the Government Code, including a personal cellular telephone number if the cellular telephone service is paid for with the official or employee's personal funds; (8) the information we have marked under section 552.1175 of the Government Code must be withheld to the extent the information consists of a peace officer's home address, home telephone number, social security number, or family member information or a personal cellular telephone or facsimile number if the officer pays for the cellular telephone service or facsimile number with his or her personal funds, if the officer elects to restrict access to the marked information in accordance with section 552.1175(b); (9) the marked Texas driver's license, motor vehicle and personal identification information must be withheld under section 552.130 of the Government Code; (10) the marked bank account, bank routing and insurance policy numbers must be withheld under section 552.136 of the Government Code; and (11) the marked e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owner of an e-mail address has consented to its disclosure.⁵ The rest of the submitted information must be released, but any copyrighted information may only be released in accordance with copyright law.⁶

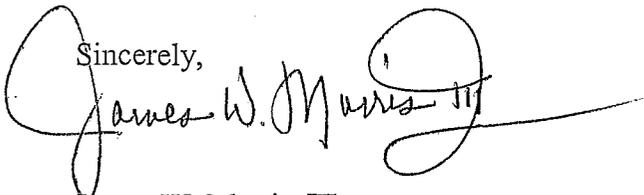
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate numbers under section 552.130, bank account, bank routing and insurance policy numbers under section 552.136, and e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

⁶We note the remaining information includes social security numbers. 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.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 400140

Enc: Submitted documents

c: Requestor
(w/o enclosures)