ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2011

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2011-09567

Dear Ms. Armstrong:

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# 422914 (Dallas ORR# 2011-3247).

The Dallas Police Department (the "department") received a request for twenty-seven categories of information pertaining to a specified incident and Service #0300693, including the personnel files of the officers involved in the incident. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.[1]

Initially, we note portions of the requested information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-07822 (2011). In this ruling, we concluded that, with the exception of basic information, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-07822 was based have changed. Accordingly, with regard to the

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

requested information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude the department may continue to rely on Open Records Letter No. 2011-07822 as a previous determination and withhold or release the identical information in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

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 section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI obtained from the National Crime Information Center or the Texas Crime Information Center is confidential under section 552.101 of the Government Code in conjunction with 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." *Id.* § 411.082(2). We note the statutory definition of CHRI does not encompass driving record information maintained by the Texas Department of Public Safety (the "DPS") under subchapter C of chapter 521 of the Transportation Code. *See id.* § 411.082(2). 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." *Id.* § 411.081(b). 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 it generates. *See* Open Records Decision No. 565 at 10-12 (1990); *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* Gov't Code § 411.089(b). The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with the federal law and subchapter F of chapter 411 of the Government Code. We conclude none of the remaining information at issue is confidential under section 552.101 in conjunction with the federal law or subchapter F of chapter 411 of the Government Code, and it may not be withheld on this basis.

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints and records of hand geometry),.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released),.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprints in the remaining information. Therefore, the department must withhold the fingerprints you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses section 58.007(c) of the Family Code, which provides in relevant part as follows:

> (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:
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> > (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 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). Under section 58.007, juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential. *See id.* § 51.03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). For purposes of section 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The information we have marked involves juvenile delinquent conduct that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.

Section 552.101 also encompasses mental health records, which are confidential under section 611.002 of the Health and Safety Code. Section 611.002 provides in part:

> (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 also id.* § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; ORD 565. The department must withhold the mental health records we have marked under section 552.101 of the Government Code in conjunction with section 611.002(a) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses section 258.102 of the Occupations Code, which provides in pertinent part as follows:

> (a) The following information is privileged and may not be disclosed except as provided by this subchapter:
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> > (1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and
> >
> > (2) a dental record.

Occ. Code § 258.102(a). A "dental record" means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *See id.* § 258.101(1). Information that is privileged under chapter 258 of the Occupations Code may be disclosed only under certain specified circumstances. *See id.* § 258.104 (consent to disclosure); *see also id.* §§ 258.105, .106, .107 (exceptions to privilege). The written consent for the release of privileged information required under section 258.104 must specify (1) the information covered by the release, (2) the person to whom the information is to be released, and (3) the purpose for the release. *Id.* § 258.104(c). A person who receives information that is privileged under section 258.102 of the Occupations Code may disclose that information to another person only to the extent that disclosure is consistent with the purpose for which the information was obtained. *See id.* § 258.108. The department must withhold the dental records we have marked under section 552.101 in conjunction with section 258.102 of the Occupations Code unless the department receives the required consent for release of those records under section 258.104 of the Occupations Code.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which makes medical records confidential. *See id.* § 159.001. Section 159.002 of the MPA provides in part:

> (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (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.

Id. § 159.002(a)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find none of the remaining information constitutes a medical record for purposes of the MPA. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with the MPA.

Information acquired from a polygraph examination is confidential under section 1703.306 of the Occupations Code, which is also encompassed by section 552.101. Section 1703.306 provides in part:

> (a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:
>
> > (1) the examinee or any other person specifically designated in writing by the examinee[.]

Id. § 1703.306(a)(1). Upon review, we find the information you have marked and the information we have marked constitutes information acquired from a polygraph examination. Accordingly, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 also encompasses common-law privacy, which protects information that (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. *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 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 also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Further, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy).

We also have concluded 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 criminal history information obtained by a law enforcement agency in the process of hiring a peace officer is a matter of legitimate public interest. We also note information relating to routine traffic violations does not implicate privacy concerns. *Cf.* Gov't Code § 411.081(b).

In this instance, most of the remaining information at issue pertains to peace officers employed by the department. As this office has stated on many occasions, the public generally has a legitimate interest in public employment and public employees, particularly those who are involved in law enforcement. *See* Open Records Decision No. 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); *see also* 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). Upon review, we find the medical and personal financial information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, the department must withhold the information we have marked

under section 552.101 of the Government Code in conjunction with common-law privacy. However, the department has failed to demonstrate how the remaining information it has marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, the department may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

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."[2] Gov't Code § 552.102(a). The Texas Supreme Court recently 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). We have marked information the department must withhold under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, emergency contact information, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)); Open Records Decision No. 622 (1994). We note section 552.117(a)(2) encompasses a peace officer's personal cellular telephone and pager numbers if the officer personally pays for the cellular or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1998) (Gov't Code § 552.117 not applicable to cellular mobile telephone numbers paid for by governmental body and intended for official use). We note a post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

You have marked the home addresses, former home addresses, home telephone numbers, cellular telephone numbers, and family member information of peace officers employed by the department. Upon review, we find this information must be withheld under section 552.117(a)(2); however, the marked cellular telephone numbers may only be withheld under section 552.117(a)(2) if the officers paid for the cellular telephone services with their own funds. We have also marked the home addresses, former home addresses, family member information, emergency contact information, and social security numbers of the peace officers at issue. The department must also withhold the information we have marked under section 552.117(a)(2). We note, however, you have also marked the officers'

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[2]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).

work telephone numbers, a post office box number, information about a fiancé and girlfriend, driver's license numbers, license plate numbers, birth dates, places of birth, and employee identification numbers under section 552.117(a)(2). Because this information does not constitute the home telephone number, home address, social security number, emergency contact information, or family member information of a peace officer, this information may not be withheld under section 552.117(a)(2) of the Government Code.

We note section 552.1175 of the Government Code may be applicable to portions of the remaining information. Section 552.1175 provides, in relevant part:

> (a) This section applies only to:
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> > (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
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> > . . .
> >
> > (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
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> > . . .
> >
> > (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b)[of the Government Code.]
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> . . .
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> (b) Information that relates to the home address, home telephone number, emergency contact information, 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:
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> > (1) chooses to restrict public access to the information; and
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> > (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.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). The remaining information contains the home addresses and home telephone numbers of peace officers not employed by the department, an employee of

the Texas Department of Criminal Justice, and a probation officer employed by Tarrant County. We have marked this information. Accordingly, if the individuals at issue elect to restrict access to the information we have marked, the department must withhold this information under section 552.1175. However, if any of the individuals at issue do not make an election, the department may not withhold the marked information pertaining to that individual under section 552.1175 of the Government Code.

Section 552.130 provides in relevant part:

> (a) Information is excepted from the requirements of Section 552.021 if the information relates to:
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> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
> >
> > (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
> >
> > (3) 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.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The department must withhold the motor vehicle information you have marked and the motor vehicle information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides in part 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." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You have marked employee identification numbers under section 552.136 of the Government Code. We understand that these same numbers are used for an employee's City of Dallas credit union account. Accordingly, the department must withhold the employee identification numbers you have marked, as well as the additional employee identification numbers we have marked, under section 552.136 of the Government Code if these numbers are related to existing credit union accounts.

Section 552.137 of the Government Code states 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). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the department must

withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

Section 552.140 of the Government Code provides in part:

> (a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

Id. § 552.140(a). In this instance, the Form DD-214 we have marked appears to have been first recorded with or otherwise obtained by the department after September 1, 2003. Therefore, the department must withhold the marked Form DD-214 under section 552.140 of the Government Code. However, the remaining Form DD-214 appears to have been first recorded with or otherwise obtained by the department prior to September 1, 2003. Thus, the department may not withhold the remaining Form DD-214 under section 552.140 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.[3] *Id.* § 552.147(a). The department may withhold the marked social security numbers under section 552.147 of the Government Code.

In summary, the department may continue to rely on Open Records Letter No. 2011-07822 as a previous determination and withhold or release the information that is identical to the information previously ruled upon in accordance with that ruling. The department must withhold (1) 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; (2) the fingerprints you have marked under section 552.101 in conjunction with section 560.002 of the Government Code; (3) the information we have marked under section 552.101 in conjunction with section 58.007(c) of the Family Code; (4) the mental health records we have marked under section 552.101 in conjunction with section 611.002(a) of the Health and Safety Code; (5) the dental records we have marked under section 552.101 in conjunction with section 258.102 of the Occupations Code; (6) the polygraph information you have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code; (7) the information we have marked under section 552.101 in conjunction with common-law privacy; (8) the information we have marked under section 552.102(a) of the Government Code; (9) the home addresses, home telephone numbers, and family member information of peace officers that you have marked and the information we have marked under section 552.117(a)(2) of the Government Code; (10) the cellular telephone numbers

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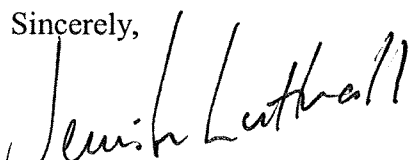
[3]We note section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

you have marked under section 552.117(a)(2) if the officers paid for the cellular telephone services with their own funds; (11) the information we have marked under section 552.1175 of the Government Code, if the individuals whose information is at issue elect to restrict access to this information; (12) the marked motor vehicle information under section 552.130 of the Government Code; (13) the marked employee identification numbers under section 552.136 of the Government Code if these numbers are related to existing credit union accounts; (14) the marked e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release; and (15) the information we have marked under section 552.140 of the Government Code. The department may withhold the marked social security numbers under section 552.147 of the Government Code.[4] The department 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.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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

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[4]We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a direct deposit authorization form under section 552.101 of the Government Code in conjunction with common-law privacy; a Texas driver's license number, copy of a Texas driver's license, and a Texas license plate number under section 552.130 of the Government Code; and an e-mail address of a member of the public under section 552.137 of the Government Code.

Ref: ID# 422914

Enc. Submitted documents

c: Requestor
(w/o enclosures)