



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2012

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2012-07985

Dear Ms. Quinn:

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# 454630 (Cedar Park Ref. No. 12-402).

The Cedar Park Police Department (the "department") received a request for "letters, reports, memorandum or documents relating to performance evaluations [of a named officer], complaints filed against [the named officer], as well as any investigations conducted regarding [the named officer]." You state the department will release some of the requested information. You state the department will withhold L-2 and L-3 forms and Texas license plate numbers pursuant to Open Records Decision No. 684 (2009),¹ information subject to sections 552.130(a)(1) and (a)(3) pursuant to section 552.130(c) of the Government Code,² and the social security numbers you have marked pursuant to section 552.147(b) of the

¹Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including: L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code and a Texas license plate number under section 552.130 of the Government Code.

²Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

Government Code.³ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 information protected by other statutes such as section 143.089 of the Local Government Code. You state that the City of Cedar Park is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files relating to a police officer: a police officer’s civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov’t Code § 143.089(a), (g). Under section 143.089(a), the officer’s civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer’s supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. We note a letter of reprimand does not constitute discipline under chapter 143. In cases in which a police department investigates a police officer’s misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer’s civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113,122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are “from the employing department” when they are held by or are in the possession of the department because of its investigation into a police officer’s misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).*

However, a document relating to an officer’s alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov’t Code § 143.089(b). In addition, a document relating to disciplinary action against a police officer that has been placed in the officer’s personnel file

³Section 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. Gov’t Code § 552.147(b).

as provided by section 143.089(a)(2) must be removed from the officer's file if the civil service commission finds the disciplinary action was taken without just cause or the charge of misconduct was not supported by sufficient evidence. *See id.* § 143.089(c). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released.⁴ *See City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state Exhibits B, C, and D are within the officer's civil service file maintained under section 143.089(a). You state the information in Exhibits E, F, G, H, I, J, and K, as well as the information you have marked within Exhibit B, is maintained in the department's internal personnel files under section 143.089(g) and the investigations at issue in these exhibits did not or have not resulted in disciplinary action. Upon our review, we find the department must withhold Exhibits E, F, G, H, I, J, and K under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.⁵ However, we note Exhibit E includes two letters of commendation for the named officer, which we have marked. These letters must also be placed in the officer's civil service file maintained under section 143.089(a). *See* Local Gov't Code § 143.089(a)(1). Additionally, we note the information you have marked in Exhibit B is within a performance evaluation that you state is maintained in the officer's civil service file under section 143.089(a). *See id.* § 143.089(a)(3). Thus, the information you have marked within the performance evaluation in the officer's civil service file in Exhibit B may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments. . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively

⁴We note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure of Exhibits E, F, G, H, I, J, or K.

to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff'd in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the department must withhold the W-4 form you have marked in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.⁶

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by 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." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we agree some of the information in Exhibit D, which we have marked, constitutes confidential CHRI the department must withhold under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. However, we find none of the remaining information you have marked constitutes confidential CHRI for the purposes of chapter 411 and the department may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5, 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions relating to the "zones of privacy" pertaining to marriage, procreation, contraception, family

⁶We note Open Records Decision No. 684 also authorizes governmental bodies to withhold W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, without the necessity of requesting an attorney general decision.

relationships, and child rearing and education the United States Supreme Court has recognized. *See Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs" and the scope of information protected is narrower than that under the common-law doctrine of privacy. *Id.* at 5 (internal quotations omitted) (quoting *Ramie*, 765 F.2d at 492).

Federal courts have recognized individuals have a constitutional right to privacy in their unclothed bodies. Quoting the United States Court of Appeals for the Ninth Circuit, which concluded, "[w]e cannot conceive of a more basic subject of privacy than the naked body[.]" the United States Court of Appeals for the Second Circuit has found "there is a right to privacy in one's unclothed or partially unclothed body, regardless [of] whether that right is established through the auspices of the Fourth Amendment or the Fourteenth Amendment." *Poe v. Leonard*, 282 F.3d 123, 138-39 (2d Cir. 2002) (quoting *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963)). Upon review, we find the department must withhold the photographs we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with constitutional privacy.⁷

Section 552.101 of the Government Code also encompasses the doctrine of 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. 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). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has 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 (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not relating to a financial transaction

⁷As our ruling is dispositive, we need not address your argument for this information.

between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Furthermore, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.,* Open Records Decision Nos. 562 at 10 (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private).

Upon review, we agree the remaining information you have marked under common-law privacy in Exhibits B, C, and D, and the additional information we have marked in Exhibits C and D, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information you have marked and we have marked pursuant to section 552.101 of the Government Code 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." 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. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we conclude the department must withhold the information you have marked in Exhibits B and D under section 552.102(a) of the Government Code.

You raise section 552.108 of the Government Code for some of the information at issue in Exhibits C and D. Section 552.108 provides in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the information for which you raise section 552.108(a)(1) is within an internal affairs file pertaining to a specified incident. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state, and provide supporting documentation from the Williamson County Attorney's Office (the "county attorney's office") representing, that the information at issue relates to an incident that is the subject of a pending criminal prosecution. Furthermore, the county attorney's office objects to the release of this information because it would hinder the pending prosecution. Based on these representations, we determine release of the information at issue at this time would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) of the Government Code is applicable to the information at issue.

We note, however, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. Thus, with the exception of the basic front page offense and arrest information, the department may withhold the information at issue under section 552.108(a)(1) of the Government Code.

You raise section 552.108(b)(1) for the cellular telephone numbers you have marked in Exhibits C and D. A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law

enforcement or prosecution. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also* *Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) 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 at 327. To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (construing statutory predecessor). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984).

You inform us that the cellular telephone numbers you have marked are numbers used by department police officers "in the field in performing the officer[s]' law enforcement responsibilities." You contend release of this information would interfere with the officers' abilities to perform their law enforcement responsibilities. Based on your representations, we find the department may withhold the cellular telephone numbers you have marked in Exhibits C and D under section 552.108(b)(1) of the Government Code.

We understand the department will withhold the information you have marked in Exhibits B, C, and D under section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001).⁸ However, we note a majority of the information you have marked in Exhibits C and D is not subject to section 552.117(a)(2). Further, you have failed to mark portions of the information in Exhibits C and D that are subject to section 552.117(a)(2). Therefore, we will address the applicability of section 552.117 to Exhibits C and D. Section 552.117(a)(2) excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. 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. Section 552.117(a)(2) protects a peace officer's personal cellular telephone number if the officer pays for the cellular telephone service with his personal funds. ORD 670 at 6; *cf.*

⁸Open Records Decision No. 670 is a previous determination to all governmental bodies authorizing them withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision.

Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). We note that section 552.117(a)(2) is not applicable to a former spouse or the fact that a peace officer has been divorced. You state one of the individuals whose information is at issue is currently a licensed peace officer. Accordingly, the department must withhold this individual's information, which we have marked in Exhibits C and D, under section 552.117(a)(2) of the Government Code. To the extent the other individuals whose information we have marked in Exhibits C and D are currently licensed peace officers, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the marked cellular telephone numbers of peace officers only if the cellular telephone service is not paid for by a governmental body. However, the remaining information you have marked in Exhibit C and D pertains to a peace officer's former spouse and may not be withheld under section 552.117(a)(2). As such, the department may not withhold any of the remaining information in Exhibits C and D under section 552.117(a)(2).

To the extent the individuals are not currently licensed peace officers, their personal information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) protects from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). As previously stated, section 552.117 is also applicable to personal cellular telephone numbers, provided the service is not paid for by a governmental body. *See* ORD 506 at 5-6. Section 552.117(a)(1) is also not applicable to a former spouse or the fact that a governmental employee has been divorced. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely elected to keep their personal information confidential pursuant to section 552.024 and the cellular telephone service is not paid for by a governmental body, the department must withhold the information we have marked in Exhibits C and D under section 552.117(a)(1) of the Government Code. The department may not withhold this information under section 552.117 for individuals who did not make a timely election to keep the information confidential.

We note portions of the remaining information in Exhibit B may be subject to section 552.1175 of the Government Code.⁹ Section 552.1175 applies to information pertaining to peace officers that the department does not hold in an employment context and provides, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(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:

(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.

Gov't Code § 552.1175(a)(1), (b). The department must withhold the information we have marked in Exhibit B under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and elects to restrict access to her information in accordance with section 552.1175(b). If the individual is no longer a licensed peace officer or no election is made, the department may not withhold the individual's information under section 552.1175 of the Government Code.

Section 552.130(a)(2) of the Government Code provides information relating to a motor vehicle title or registration issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a)(2). We find the department must withhold the vehicle identification numbers ("VINs") you have marked, as well as the additional motor vehicle record information we marked, in Exhibit D under section 552.130 of the Government Code.

⁹The 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.

You state you will withhold the e-mail addresses you have marked under section 552.137 of the Government Code pursuant to Open Records Decision No. 684.¹⁰ However, we note the remaining information contains additional e-mail addresses that are subject to section 552.137. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the department must also withhold the additional e-mail addresses we have marked in Exhibit C under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.

In summary, the department must withhold the following information under section 552.101 of the Government Code: (1) Exhibits E, F, G, H, I, J, and K in conjunction with section 143.089(g) of the Local Government Code; (2) the W-4 form you have marked in Exhibit B in conjunction with section 6103(a) of title 26 of the United States Code; (3) the CHRI we have marked in Exhibit D in conjunction with federal law and chapter 411 of the Government Code; (4) the photographs we have marked in Exhibit C in conjunction with constitutional privacy; and (5) the information you have marked in Exhibits B, C, and D, and the additional information we have marked in Exhibits C and D in conjunction with common-law privacy. The department must withhold the information you have marked in Exhibits B and D under section 552.102(a) of the Government Code. With the exception of the basic information, the department may withhold the information you have marked in Exhibit C under section 552.108(a)(1) of the Government Code and the cellular telephone numbers you have marked in Exhibits C and D under section 552.108(b)(1) of the Government Code. The department must withhold only the information we have marked in Exhibits C and D under section 552.117(a)(2) of the Government Code if the individuals are currently licensed peace officers and if the cellular telephone service is not paid for by a governmental body. The department must withhold the information we have marked in Exhibits C and D under section 552.117(a)(1) of the Government Code if the individuals timely elected confidentiality and if the cellular telephone service is not paid for by a governmental body. The department must withhold the information we have marked in Exhibit B under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer and elects to restrict access to her information. The department must withhold the VINs you have marked and the additional information we have marked in Exhibit D under section 552.130 of the Government Code.

¹⁰Open Records Decision No. 684 also authorizes governmental bodies to withhold an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

The department must withhold the additional e-mail addresses we have marked in Exhibit C under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The department must release the remaining information.¹¹

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 454630

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹¹We note the remaining information in Exhibit D includes partial social security numbers. As previously noted, 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. Gov't Code § 552.147(b).