



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 25, 2012

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

OR2012-09789

Dear Ms. McClellan:

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# 457012 (DPD Request# 2012-04143).

The City of Dallas (the "city") received a request for the personnel file of a named former police officer and certain documents regarding a specified incident.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.130, 552.136, and 552.147 of the Government Code. We

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<sup>1</sup>We note the city sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, you inform us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2012-01460 (2012), 2012-05131 (2012), 2012-05562 (2012), 2012-05865 (2012), and 2012-07873 (2012). To the extent there has been no change in the law, facts, and circumstances on which the previous rulings were based, we conclude the city must withhold or release any information we previously ruled upon in accordance with Open Records Letter Nos. 2012-05562, 2012-05865, 2012-05131, 2012-06825, and 2011-16807. See Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we note a portion of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information includes a document filed with a court. A document that has been filed with a court is expressly public under section 552.022(a)(17) of the Government Code and may not be withheld unless it is confidential under the Act or other law. See *id.* § 552.022(a)(17). You raise sections 552.103 and 552.108 of the Government Code for this information. However, these are discretionary exceptions to disclosure and do not make information confidential under the Act. See Act of May 30, 2011, 82nd Leg., R.S., ch. 1229, §§ 3-21, 23-26, 28-37, 2011 Tex. Gen. Laws 3270, 3272-3275 (providing for "confidentiality" of information under specified exceptions); *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); see Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold the information at issue under these sections.

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<sup>2</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

As you raise no other arguments for the marked search warrant, it must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will consider your claims under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.130, 552.136, and 552.147 for the remaining submitted information.

We next turn to your assertion of section 552.108 of the Government Code, as it is potentially the most encompassing exception you claim. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information you have marked relates to three pending criminal cases and release of the information would interfere with the investigation and prosecution of crime. Based on your representation and our review, we conclude release of the submitted information you have marked 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, we find section 552.108(a)(1) is applicable to the submitted information you have marked.

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 186-87; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). With the exception of the basic information, the city may withhold the submitted information you have marked under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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. Section 552.101 encompasses information made confidential by statute, such as section 611.002(a) of the Health and Safety Code, which provides, “[c]ommunications 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.” Health & Safety Code § 611.002(a). Section 611.001 defines

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<sup>3</sup>As our ruling is dispositive for this information, we do not address your other arguments against disclosure, except to note, generally, basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See Open Records Decision No. 565 at 7 (1990)*. The mental health records we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides in relevant 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;

(2) the person that requested the examination;

(3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;

(4) another polygraph examiner in private consultation; or

(5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306(a)-(b). It does not appear the requestor falls into any of the categories of individuals authorized to receive the polygraph information under section 1703.306(a). Thus, the polygraph information you have marked is confidential under section 1703.306 and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in relevant part:

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

Health & Safety Code § 773.091(b). Section 773.091 applies to records of the provision of emergency medical services (“EMS”). *See* Open Records Decision No. 632 (1995). Upon review, we find none of the remaining information at issue constitutes EMS records for the purposes of section 773.091 of the Health and Safety Code. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with section 773.091 of the Health and Safety Code.

Section 552.101 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. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. ORD 565 at 7. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information you have marked, with the exception of information we have marked for release, consists of confidential CHRI. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

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. *See 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 satisfied. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Further, some of the information you seek to withhold under common-law privacy pertains to the named former officer’s criminal history. This

office has found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 (scope of public employee privacy is narrow). In this instance, the criminal history information you seek to withhold pertains to a former police officer, not a private citizen. Because the former officer's compiled criminal history information at issue was gathered in the course of the former officer's pre-employment screening, there is a legitimate public interest in the information. Upon review, we agree a portion of the remaining information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated the remaining information is highly intimate or embarrassing and not a matter of legitimate public interest. Accordingly, no portion of the remaining information you marked is subject to common-law privacy, and the city may not withhold any of the remaining information under section 552.101 on that basis.

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 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 find the city must withhold the dates of birth you have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, it is unclear if the individual at issue is currently a licensed peace officer as defined by article 2.12. Accordingly, if the individual at issue is currently a licensed peace officer as defined by article 2.12, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual at issue is not a currently licensed peace officer, then her personal information may not be withheld under section 552.117(a)(2) of the Government Code. We find section 552.117(a)(2) does not apply to the remaining information you marked, and the city may not withhold any of the remaining information on that basis.

If the individual whose information is at issue is no longer a licensed peace officer, then her personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts the same information for a current or former employee of a governmental

body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). 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 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. Therefore, if the individual at issue is no longer a licensed peace officer as defined by article 2.12, then to the extent the individual timely elected confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If, however, the individual at issue did not timely elect to keep her personal information confidential, her marked personal information may not be withheld under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the motor vehicle record information you have marked, as well as the additional information we marked, under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[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"). We understand the employee identification numbers you have marked are used in conjunction with one additional digit to access city credit union bank accounts. We therefore conclude the city must withhold the employee identification numbers you have marked in the remaining records under section 552.136 of the Government Code.

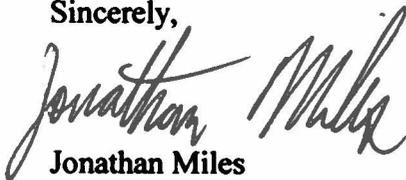
In summary, to the extent there has been no change in the law, facts, and circumstances on which the previous rulings were based, we conclude the city must withhold or release any information we previously ruled upon in accordance with Open Records Letter Nos. 2012-05562, 2012-05865, 2012-05131, 2012-06825, and 2011-16807. The city must release the search warrant we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the city may withhold the submitted information you have marked under section 552.108(a)(1) of the Government Code. The mental health records we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The city must withhold the polygraph information you have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. With the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in

conjunction with section 411.083 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the dates of birth which you have marked under section 552.102(a) of the Government Code. To the extent the individual at issue is currently a licensed peace officer, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the individual at issue is no longer a licensed police officer, then to the extent she timely elected confidentiality under section 552.024, then the city must withhold her marked personal information under section 552.117(a)(1) of the Government Code. The city must withhold the motor vehicle record information you have marked, as well as the additional information we marked, under section 552.130 of the Government Code, and the employee identification numbers you have marked in the remaining records under section 552.136 of the Government Code. The remaining information must be released.

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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/bhf

Ref: ID# 457012

Enc. Submitted documents

c: Requestor  
(w/o enclosures)