



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2012

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2012-10999

Dear Ms. Cost:

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# 457874 (PIR# 12-1174).

The Texas Department of Public Safety (the "department") received a request for (1) records pertaining to a change in employment status of a named former employee, the investigative file related to the employee's departure, a statement of charges, and records from the employee's personnel file; (2) contracts approved on a no-bid basis by the employee; (3) e-mails sent from the employee's e-mail account; and (4) e-mails pertaining to the department's e-mail retention policy.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.116, and 552.139 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor.

¹You state the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 676 at 1-2 (2002). We further note the proper exception to raise when asserting the attorney-client privilege in this instance is section 552.107 of the Government Code. *See id.*

See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-10094 (2012). In that ruling, we determined the department may withhold some of the information at issue under section 552.116 of the Government Code, and may withhold the remaining information at issue under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the department may rely on Open Records Letter No. 2012-10094 as a previous determination and withhold the information we marked information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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).

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184

(Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state some of the remaining information, which you have marked, consists of confidential communications between attorneys for and staff members of the department. You state these communications were made for the purpose of rendering of legal advice to the department. You state these communications were confidential, and their confidentiality has been maintained. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information you have marked. Accordingly, the department may withhold the information you marked under section 552.107(1) of the Government Code.

We next address the submitted arguments under section 552.108 of the Government Code for the information you have marked. 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(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and have provided documentation demonstrating, the Travis County District Attorney’s Office objects to disclosure of the information at issue because the information pertains to an open case that is still under investigation and release of the information would interfere with the investigation and prosecution of the case. Based upon these representations, we conclude release of the information you marked will 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); *see also* Open Records Decision No. 372 at 4 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information). Therefore, the department may withhold the information you marked under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov’t Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). 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. *See* Gov’t Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte 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.” See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no writ). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. See, e.g., Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. See, e.g., ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information at issue, which you marked, pertains to department security systems and methods, as well as the location and maintenance of those systems. You state release of the information you have marked would provide wrong-doers, drug traffickers, terrorists, and criminals with “invaluable information concerning investigative techniques and procedures used in law enforcement.” Based on your representations and our review of the information at issue, we find the information we have marked consists of internal records of a law enforcement agency that, if released, would interfere with law enforcement and crime prevention. Accordingly, the department may withhold this information under section 552.108(b)(1) of the Government Code.³ However, you have failed to demonstrate how any portion of the remaining information at issue would interfere with law enforcement and crime prevention. Thus, the department may not withhold any of the remaining information you marked under section 552.108(b)(1).

Section 552.116 of the Government Code provides,

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

³As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure of portions of the information at issue.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. A governmental body that invokes section 552.116 must demonstrate the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. You explain portions of the remaining information, which you marked, pertain to audits conducted by the department's Office of Audit and Review (the "OAR") and the department's Office of the Inspector General (the "OIG"). Section 411.243 provides the OAR shall inspect all department divisions to ensure that operations are conducted in compliance with established procedures, and shall make recommendations for improvements in operational performance. *Id.* § 411.243(a)(1); *see also id.* § 411.241(1) (OAR shall inspect and audit departmental programs and operations for compliance with established procedures and develop recommendations for improvement). Section 411.251 establishes the OIG, *see id.* § 411.251(a), and authorizes the OIG to investigate criminal conduct within the department. *Id.* § 411.251. You inform us the audits at issue were conducted pursuant to sections 411.243 and 411.251 of the Government Code. You state the information at issue consists of information prepared or maintained in conducting the audits or preparing audit reports. After reviewing the department's arguments and the submitted information, we agree the information you marked consists of audit working papers prepared or maintained by the department in conducting an audit authorized or required by a statute of this state. *See id.* § 552.116(a), (b)(1)-(2). Therefore, the department may withhold the information you marked under section 552.116 of the Government Code.

Section 552.139 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted

information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

- (1) a computer network vulnerability report;
- (2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Id. § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides, in pertinent part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

Id. § 2059.055(b). You state some of the remaining information, which you have marked, discusses vulnerabilities in the department's Information Technology division, including assessments of the extent to which various programs and systems are vulnerable to alteration, damage, erasure, and inappropriate use, especially in critical law enforcement areas. You further state the information you marked contains communications between state agencies regarding computer network security and the design, operation, or defense of computer networks. You inform us the information at issue reveals potential vulnerabilities in the agencies' computer systems and how these vulnerabilities can be prevented or managed. Thus, you argue, revealing the information at issue could allow breach of the agencies' information systems. Based on your arguments and our review of the information at issue, we find some of the information consists of assessments of the extent to which computer

systems are vulnerable to unauthorized access or harm, as well as Internet Protocol addresses and computer usernames and passwords used to access a computer network that could be used to gain unauthorized access to department computers. Accordingly, the department must withhold the information we have marked under section 552.139 of the Government Code. However, you have not demonstrated how any portion of the remaining information at issue relates to computer network security, or to the design, operation, or defense of a computer network as contemplated in section 552.139(a), consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b), or relates to computer network security or restricted information under section 2059.055. Thus, none of the remaining information consists of restricted network information for purposes of section 552.139, and the department may not withhold it on that basis.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. You assert portions of the remaining information, which you have marked, are made confidential by sections 418.177, 418.179, 418.181, and 418.182 of the Government Code. Section 418.177 provides,

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Gov't Code § 418.177. Section 418.179 provides, in relevant part,

(a) Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to the details of the encryption codes or security keys for a public communications system.

Id. § 418.179(a). Section 418.181 provides,

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Id. § 418.181. Section 418.182 provides, in relevant part,

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Upon review, we find you have not explained how any portion of the remaining information you marked pertains to terrorism or related criminal activity. Therefore, no portion of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with the provisions of the Texas Homeland Security Act.

Section 552.101 of the Government Code also encompasses information protected by chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). 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. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that 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 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find you have not demonstrated how any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The type of information considered intimate and 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. This office has found 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* ORDs 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* We further note the scope of a public employee's privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any portion of the remaining information you have marked is highly intimate or embarrassing and not of

legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

We note the remaining information contains information that is subject to sections 552.117, 552.130, and 552.137 of the Government Code.⁴ 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. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, if a governmental body does not pay for the cellular telephone service, the department must withhold the marked cellular telephone number of a peace officer under section 552.117(a)(2) of the Government Code; however, if a governmental body pays for the cellular telephone service, the department may not withhold the marked cellular telephone number of a peace officer under section 552.117(a)(2).⁵

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. As noted above, section 552.117 applies to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See ORD 506 at 5-6*. 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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 employee or official who did not timely request under section 552.024 the information be kept confidential. We have marked information, including a representative sample of cellular telephone numbers of department employees, that may be subject to

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

⁵We note a governmental body may withhold a peace officer's personal cellular telephone number, under section 552.117(a)(2) without requesting a decision from this office. *See Open Records Decision No. 670 (2001)*.

section 552.117(a)(1). Therefore, to the extent the department employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, if the marked telephone numbers are cellular telephone numbers, they may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the department employees whose information is at issue did not timely request confidentiality under section 552.024, or a governmental body pays for the cellular telephone service, the department may not withhold the marked information 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. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code 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). *See id.* § 552.137(a)-(c). To the extent the e-mail addresses at issue, a representative sample of which we have marked, are not excluded by subsection (c), the department must withhold personal e-mail addresses within the remaining information under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure.

In summary, the department must rely on Open Records Letter No. 2012-10094 as a previous determination and withhold or release the information we marked in accordance with that ruling. The department may withhold (1) the information you marked under sections 552.107 and 552.108(a)(1) of the Government Code, (2) the information we marked under section 552.108(b)(1) of the Government Code, and (3) the information you marked under section 552.116 of the Government Code. The department must withhold the information we marked under section 552.139 of the Government Code and section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the marked cellular telephone number of a peace officer under section 552.117(a)(2) of the Government Code, if a governmental body does not pay for the cellular telephone service; however, if a governmental body pays for the cellular telephone service, the department may not withhold the marked cellular telephone number of a peace officer under section 552.117(a)(2). To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked, including the marked representative sample of cellular telephone numbers of department employees, under section 552.117(a)(1) of the Government Code; however, if the marked telephone numbers are cellular telephone numbers, they may be withheld only if a governmental body does not pay for the cellular telephone service. The department must withhold the motor vehicle record information we

marked under section 552.130 of the Government Code. To the extent the e-mail addresses in the remaining documents, a representative sample of which we have marked, are not excluded by subsection (c), the department must withhold e-mail addresses under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure. 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 457874

Enc. Submitted documents

c: Requestor
(w/o enclosures)