



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2012

Ms. Lisa D. Mares
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2012-14950A

Dear Ms. Mares:

This office issued Open Records Letter No. 2012-14950 (2012) on September 19, 2012. Since that time, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on September 19, 2012. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 473219.

The City of Haltom and the Haltom Police Department (collectively, the "city"), which you represent, received a request for twenty-five categories of information pertaining to a specified incident, four categories of information pertaining to the personnel file of a named city police officer, and information pertaining to specified rules, policies, and procedures of the Haltom Police Department (the "department"). You state the city does not possess some of the information requested pertaining to the specified incident.¹ You state the city is releasing some of the requested information. You also state you will redact social security numbers pursuant to section 552.147(b) of the Government Code and certain information

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

pursuant to Open Records Decision No. 684 (2009).² You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.130, and 552.152 of the Government Code.³ You state that, although the city takes no position with respect to the information in Exhibit F, it may implicate the interests of Multi-Health Systems Inc. ("Multi-Health"). Accordingly, you state, and provide documentation demonstrating, the city notified Multi-Health of the request for information and of its right to submit arguments stating why its information should not be released. *See id.* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Multi-Health. We have considered the submitted arguments and reviewed the submitted information, a portion of which you state constitutes a representative sample.⁴ Additionally, we have received and considered comments submitted by the requestor. *See Gov't Code* § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, the requestor asserts he was not timely notified of the city's request for a ruling from this office as required by section 552.301(d) of the Government Code. *See id.* § 552.301(d) (governmental body must provide requestor with copy of governmental body's written communication to attorney general asking for decision). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption that the information is public. We note the city's request for a decision to this office was timely submitted and shows it was

²Section 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). Open Records Decision No. 684 is 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: direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy; W-2 and 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; 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 Form DD-214 or other military discharge record that is first recorded or first comes into the possession of a governmental body on or after September 1, 2003 under section 552.140(b) of the Government Code.

³Although you raise section 552.151 of the Government Code for the submitted information, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

⁴This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See Gov't Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

copied to the requestor. This office is unable to resolve disputes of fact in the open records ruling process. Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. ~~See Open Records Decision No. 522 at 4 (1990). Based on the~~ submitted information, we find the city complied with the procedural requirements of section 552.301(d) in copying the requestor on the correspondence requesting this ruling.

We next address section 552.108 of the Government Code, as it is potentially the most encompassing exception you raise. 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:

...

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(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; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(1)-(2). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have not released in Exhibit B, and the information in Exhibits B-1 through B-3 and C pertain to criminal investigations by the department that concluded in results other than convictions or deferred adjudication. You state Exhibit B-4 is an internal memoranda that relates to an investigation by the department that did not result in conviction or deferred adjudication. Based upon your representations and our review, we conclude the city may withhold the information you have

not released in Exhibit B, and the information in Exhibits B-1 through B-3 and C under subsection 552.108(a)(2), and the information in Exhibit B-4 under subsection 552.108(b)(2).⁵

Subsection 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 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 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 (1990) (construing statutory predecessor). This office has concluded that 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 assert the information you have marked in Exhibit D is excepted from disclosure under subsection 552.108(b)(1). You state this information consists of the department’s General Orders that pertain to Use of Force and Arrest and Search policies and procedures, and disclosure of the information at issue would “compromise the [c]ity’s ability to enforce laws and prevent crime or protect police officers.” You further explain release of this information would impair an officer’s ability to arrest a suspect by providing the suspect with information that would allow the suspect “to anticipate when and whether certain instruments and/or tactics may be utilized[.]” Based on your arguments and our review, we agree that release of most of the information for which you raise section 552.108(b)(1) would interfere with law enforcement. However, we find a portion of the information you have marked pertains to common law rules regarding warrantless searches. This information, which we have marked for release, may not be withheld on this basis. *See* ORD 531 at 2-3. Thus, with the

⁵As our ruling is dispositive, we need not address your remaining argument under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege for Exhibits B-3 and C.

exception of the information we have marked for release, the city may withhold the information you have marked within Exhibit D under section 552.108(b)(1).

~~Section 552.101 of the Government Code~~ ~~excepts from disclosure~~ “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI 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.” *Id.* § 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). 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. However, 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). We also note that the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Accordingly, the city must withhold the CHRI we have marked in Exhibit E under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. However, we find none of the remaining information constitutes confidential CHRI for the purposes of chapter 411. As such, the city may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining “biometric identifier” to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless individual consents to disclosure). Therefore, the city must withhold the fingerprints we have marked in Exhibit E under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

~~(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.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review we find the information we have marked constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the polygraph information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, we find you have failed to demonstrate how any of the remaining information was acquired from a polygraph examination. Thus, the city may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.101 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. 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). This office has found, however, the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. *See Open Records Decision Nos.* 562 at 10 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). Although portions of the remaining information contain criminal history compilations, this information was obtained by the city in the context of hiring the named police officer. Therefore this information is of legitimate public interest and may not be withheld under section 552.101 on the basis of common-law privacy.

This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally Open Records Decision Nos.* 600 at 9-10 (1992) (employee's withholding allowance certificate, 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), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See ORDs* 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., ORD* 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). Upon our review, we find Exhibit E contains personal financial details that are not of legitimate public interest. Therefore, we conclude the city must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy. However, we find you have failed to establish any of the remaining information is highly

intimate or embarrassing and not of legitimate concern to the public; therefore, the city may not withhold any of the remaining information under section 552.101 on this basis.

~~You also claim some of the submitted information is excepted from disclosure under~~ section 552.102 of the Government Code. Section 552.102(a) 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). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert*’s interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of section 552.102, and has 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. *Id.* at 347. Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a). The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

We understand Multi-Health to raise section 552.110 of the Government Code for its information in Exhibit F. Section 552.110 protects (1) trade secrets and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. Gov’t Code § 552.110. Section 552.110(a) protects the proprietary interests of private parties by excepting from disclosure information that is trade secrets obtained from a person and information that is privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides a trade secret to be as follows:

[A]ny formula, pattern, device or compilation of information which is used in one’s business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees A trade secret is a process or device for

continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (citation omitted); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret, as well as the Restatement's list of six trade secret factors.⁶ *See* RESTATEMENT OF TORTS § 757 cmt. b (1939). This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Multi-Health claims its test protocols constitute trade secrets. Upon review, we find Multi-Health has failed to demonstrate its information meets the definition of a trade secret, nor has

⁶There are six factors the Restatement gives as indicia of whether information qualifies as a trade secret:

- (1) the extent to which the information is known outside of [the company's] business;
- (2) the extent to which it is known by employees and others involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2, (1982), 306 at 2 (1982), 255 at 2 (1980).

it demonstrated the necessary factors to establish a trade secret claim for this information. Accordingly, the city may not withhold any of the information in Exhibit F on the basis of section 552.110(a).

Multi-Health also contends the “questions and answers, scoring, test protocols, manuals[,] and other materials divulging test questions or answers” are commercial or financial information, release of which would cause substantial competitive harm to Multi-Health. Upon review, we conclude Multi-Health has made only conclusory allegations that release of its information would cause it substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. *See* Gov’t Code § 552.110(b). We therefore conclude the city may not withhold any of the information in Exhibit F under section 552.110(b).

Section 552.117(a)(2) of the Government Code exempts 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.⁷ *Id.* § 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. Open Records Decision No. 670 at 6 (2001); *cf.* 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 an individual’s personal post office box number is not a “home address” for purposes of section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (legislative history makes clear that purpose of section 552.117 is to “protect public employees from being harassed *at home*” (emphasis added) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)). Accordingly, if the individual whose information we have marked in Exhibit E is still a licensed peace officer, the city must withhold the information we have marked under section 552.117(a)(2), including the cellular telephone number if the individual pays for the cellular telephone service with personal funds.⁸

⁷The 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).

⁸We note the previous determination issued in Open Records Decision No. 670 (2001) authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone 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.

If the individual concerned is no longer a licensed peace officer, the marked information may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former 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 noted above, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service or pager service is not paid for by a governmental body. See ORD 506 at 5-6. 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 a current or former employee only if the individual 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 individual whose information is at issue timely requested confidentiality pursuant to section 552.024, the information we have marked under section 552.117 must be withheld under section 552.117(a)(1), including the personal cellular telephone number if the individual pays for the cellular telephone service with his personal funds. The city may not withhold the marked information under section 552.117 if the individual did not make a timely election to keep the information confidential.

You state the city will withhold driver's license numbers under subsection 552.130(a)(1) pursuant to section 552.130(c) of the Government Code and Texas license plate numbers and a copy of a Texas driver's license pursuant to Open Records Decision No. 684. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a copy of a Texas driver's license subject to subsection 552.130(a)(1) and a Texas license plate number subject to subsection 552.130(a)(2) under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with subsection 552.130(e). See *id.* § 552.130(d), (e). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3), such as a copy of a Texas driver's license, in accordance with subsection 552.130(c), not Open Records Decision No. 684. Furthermore, we understand you to have marked additional information under section 552.130 that is not subject to section 552.130(c) or Open Records Decision No. 684. This information may not be withheld without requesting a decision from this office. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of

Texas or another state or country is excepted from public release. *Id.* § 552.130(a). Upon review, we conclude the city must withhold the information we have marked under section 552.130. None of the remaining information you seek to withhold is subject to section 552.130; thus, the city may not withhold any of the remaining information on this basis.

Section 552.136 of the Government Code states, "Notwithstanding any other provision of this chapter, 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 also id.* § 552.136(a) (defining "access device"). This office has determined an insurance policy number is an access device number for the purposes of section 552.136. Accordingly, the city must withhold the insurance policy numbers we have marked under section 552.136.

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). *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 address we have marked is not one of the types specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail address we have marked under section 552.137, unless the owner of the address affirmatively consents to its release.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. Upon review, we find you have failed to demonstrate that release of any of the remaining information in Exhibit E would subject any officer to a substantial threat of harm. Therefore, the city may not withhold any of the information at issue under section 552.152.

You and Multi-Health each state, and we agree, some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision

No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city may withhold the information you have not already released in Exhibit B, and the information in Exhibits B-1 through B-3 and C under subsection 552.108(a)(2) of the Government Code; the information in Exhibit B-4 under subsection 552.108(b)(2) of the Government Code; and, with the exception of the information we have marked for release, the information you have marked within Exhibit D under section 552.108(b)(1) of the Government Code. The city must withhold the following: (1) the CHRI we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (2) the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (3) the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (4) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (5) the information we have marked under section 552.102(a) of the Government Code; (6) the information we have marked under section 552.117(a)(2) of the Government Code, including the cellular telephone number, if the individual is still a licensed peace officer and pays for the cellular telephone service with personal funds; (7) the information we have marked under section 552.117(a)(1) of the Government Code, including the personal cellular telephone number if the individual pays for the cellular telephone service with his personal funds and timely requested confidentiality; (8) the city must withhold the information we have marked under section 552.130 of the Government Code; (9) the insurance policy numbers we have marked under section 552.136 of the Government Code; and (10) the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.⁹ The city must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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.

⁹We note Open Records Decision No. 684 also authorizes all governmental bodies to withhold a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code and 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.

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/tch

Ref: ID# 473219

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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