



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2012

Ms. M. Ann Montgomery-Moran
Assistant Ellis County & District Attorney
109 South Jackson
Waxahachie, Texas 75165

OR2012-15283

Dear Ms. Montgomery-Moran:

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# 465936.

The Ennis Police Department (the "department") received a request for seventeen categories of information and a second request from the same requestor for the same seventeen categories of information and an additional thirty-one categories of information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.130, 552.137, and 552.147 of the Government Code and privileged under article 39.14 of the Code of Criminal Procedure.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note the requestor asks for certain tangible physical items in the department's possession to be returned to his client. The Act is applicable to "public information," which is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body, and the governmental body owns the information or has a right of access to it. *See* Gov't Code § 552.002. This office has ruled, however, that tangible physical items are not "information," as that term is contemplated under the Act. *See* Open Records Decision No. 581 (1990). Therefore, the tangible physical items are not public information for purposes of section 552.002 of the Government Code, and the Act does not require the department to make these items available to the requestor. *See* Gov't Code §§ 552.002, .021.

¹Although you also raise section 552.136 of the Government Code, you have provided no arguments to support this exception. Accordingly, we assume you have withdrawn your claim this section applies to the submitted information.

Next, you assert categories 23, 24, 32, and 36 of the second request require the department to compile lists of information. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Furthermore, the Act does not require a governmental body to make available information that did not exist when the request was received, nor does it require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). You have not submitted any information responsive to these portions of the request. Thus, to the extent information responsive to these portions of the request existed on the date the department received the request, the department must release that information. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note you have marked some information as not responsive as it does not relate to the police officers whose information was requested. This ruling does not address the availability of non-responsive information and the department is not required to release such information in response to the request.

Next, we note the department did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to “ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the tenth business-day after the date of receiving the written request.” Gov’t Code § 552.301(b). The department received the second request for information on August 3, 2012. Accordingly, the ten-business-day deadline for the second request was August 17, 2012. You did not raise section 552.103 of the Government Code until August 22, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Further, you did not raise section 552.103 until after the ten-business-day deadline had passed for identical information you submitted as responsive to the first request. Accordingly, with respect to section 552.103, we conclude the department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.103 of the

Government Code is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, in failing to comply with section 552.301, the department has waived its argument under section 552.103 and may not withhold any of the responsive information on that basis. However, we will address your timely raised arguments for the responsive information.

You seek to withhold some of the responsive information pursuant to article 39.14 of the Code of Criminal Procedure. However, article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. Article 39.14 does not expressly make information confidential for purposes of the Act. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality under section 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 575 at 2 (1990) (explicitly stating that discovery privileges are not covered by statutory predecessor to section 552.101). We therefore conclude the department may not withhold any of the responsive information under article 39.14.

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 other statutes, such as section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . , or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, we agree the department must withhold the W-4 forms you have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the release of an F-5 form ("Report of Separation of Licensee") submitted to the Texas Commission on Law Enforcement Officers Standards and Education ("TCLEOSE"). We note the submitted information includes F-5 forms created prior to the effective date of the amendment of section 1701.454 by the Seventy-ninth

Legislature. See Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4094, 4096. Those documents are governed by the previous version of section 1701.454. See *id.* § 6.² Section 1701.454 previously provided as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subsection, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter. The report or statement may be released only by the [TCLEOSE] employee having the responsibility to maintain the report or statement and only if:

(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

(2) the person who is the subject of the report or statement authorizes the release by providing a sworn statement on a form supplied by [TCLEOSE] that includes the person's waiver of liability regarding an agency head who is responsible for or who takes action based on the report or statement.

Occ. Code § 1701.454. As amended by the 79th Legislature, section 1701.454 now provides:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

²Section 6 of the amending legislation states that "[t]he changes in law made by this Act in relation to employment termination reports apply only to an employment termination report under Subchapter J, Chapter 1701, Occupations Code, regarding a resignation or termination that occurs on or after the effective date of this Act. An employment termination report regarding a resignation or termination that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date, and that law is continued in effect for that purpose." Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 6, 2005 Tex. Gen. Laws 4094, 4096.

Id. The submitted F-5 forms do not appear to be subject to release under either version of the statute. Therefore, the F-5 forms we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

The remaining responsive information contains L-3 Declaration of Psychological and Emotional Health forms required by TCLEOSE. These forms are confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Id. § 1701.306(a), (b). Thus, the department must withhold the L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. However, the department may not withhold any portion of the remaining responsive information under section 552.101 in conjunction with section 1701.306.

The Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, is also encompassed by section 552.101 of the Government Code. *Id.* §§ 151.001-168.202. Section 159.002 of the MPA provides in part the following:

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

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Upon review, we have marked medical records within the remaining responsive information. The marked information may only be released in accordance with the MPA. However, we find none of the remaining information constitutes a medical record or information from a medical record. Accordingly, the department may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with the MPA.

The remaining responsive information also contains mental health records. Section 611.002 of the Health and Safety Code governs the public availability of mental health records. Section 611.002, which is also encompassed by section 552.101 of the Government Code, provides in part the following:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that is made confidential by section 611.002 only by certain individuals. *See id.* §§ 611.004, .0045; Open Records Decision No. 565 (1990). We have marked the mental health records the department must withhold under section 552.101 in conjunction with section 611.002, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045.

The remaining responsive information contains CR-3 reports. Section 552.101 of the Government Code also encompasses information other statutes make confidential, such as chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. In this case, the requestor has not provided the department with two of the three pieces of information. Thus, the department must withhold the submitted accident reports you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code also encompasses the common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and 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). We have also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We also have concluded a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person, and is generally not of legitimate concern to the public. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal

history). We note information relating to routine traffic violations does not implicate privacy concerns. *Cf.* Gov't Code § 411.081(b).

The information at issue pertains to department employees. As this office has stated on many occasions, the public generally has a legitimate interest in public employment and public employees, particularly those who are involved in law enforcement. *See* Open Records Decision No. 444 at 6 (1986) (public has genuine interest in information concerning law enforcement employee's qualifications and performance and circumstances of his termination or resignation); *see also* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 at 4 (job performance does not generally constitute public employee's private affairs). We find the information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. The department must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining responsive information is highly intimate or embarrassing and of no legitimate public interest, and it may not be withheld under section 552.101 on that basis.

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwanted invasion of personal privacy." Gov't Code § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. *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 Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 342 (Tex. 2010). The supreme court then considered the applicability of section 552.102, and held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 346. Accordingly, the department must withhold the dates of birth of department employees you have marked, and the additional dates of birth we have marked, under section 552.102(a) of the Government Code. However, we find none of the remaining responsive information is excepted under section 552.102(a), and the department may not withhold any of the remaining responsive information on that basis.

Section 552.108(a)(1) of the Government Code 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 must reasonably explain how release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply

to information requested); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information you have marked pertain to a pending criminal investigation and prosecution. You assert release of this information would hinder the effective case preparation of the prosecution. Based on your representations and our review, we find the department may withhold the information you have marked under section 552.108(a)(1) of the Government Code.³ *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court describes law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer's home address and telephone number, emergency contact information, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. 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. Upon review, we find the information you have marked, and the additional information we have marked, consists of the personal information of individuals who may be current department officers. To the extent the individuals to whom the marked information pertains are currently licensed peace officers, the department must withhold the marked personal information under section 552.117(a)(2) of the Government Code.

If the individuals at issue are not currently licensed peace officers, then section 552.117(a)(1) of the Government Code may apply to the information at issue. 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 of a governmental body who requests this information be kept confidential under section 552.024. *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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals at issue are not currently licensed peace officers and timely requested confidentiality under section 552.024, the department must withhold the marked information under section 552.117(a)(1) of the Government Code.⁴

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

⁴Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code § 552.147(b)*.

We note a portion of the remaining responsive information may be excepted from disclosure under section 552.1175 of the Government Code.⁵ Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

(2) county jailers as defined by Section 1701.001 , Occupations Code;

...

(4) commissioned security officers as defined by Section 1702.002, Occupations Code[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). The remaining responsive information includes the telephone numbers of individuals who may be licensed peace officers, county jailers, or commissioned security officers employed by another governmental body. Therefore, to the extent the information we have marked pertains to licensed peace officers, county jailers, or commissioned security officers, and the individuals elect to restrict access to their information in accordance with section 552.1175(b), the information we have marked must be withheld under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, title, or registration issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to his client's motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground

⁵The 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.

that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, we find the department must withhold only the motor vehicle record information we have marked under section 552.130 of the Government Code. However, we find you have failed to demonstrate the remaining information you have marked consists of motor vehicle information for purposes of section 552.130. Accordingly, the department may not withhold the remaining information you have marked under section 552.130.

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 Gov’t Code § 552.137(a), (b)*. We conclude the department must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their disclosure.

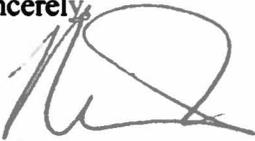
In summary, the department must withhold (1) the W-4 forms you have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (2) the F-5 forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (3) the L-3 declarations we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (4) the medical records we have marked, which may only be released in accordance with the MPA; (5) the mental health records we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code, unless the requestor is authorized to obtain that information under sections 611.004 and 611.0045; (6) the submitted accident reports you have marked under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code; (7) the marked information under section 552.101 of the Government Code in conjunction with common-law privacy; and (8) the dates of birth of department employees you have marked, and the additional dates of birth we have marked, under section 552.102(a) of the Government Code. The department may withhold the information you have marked under section 552.108(a)(1) of the Government Code. To the extent the individuals to whom the marked information pertains are currently licensed peace officers, the department must withhold the marked personal information under section 552.117(a)(2) of the Government Code. To the extent the individuals at issue are not currently licensed peace officers and timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the marked information under section 552.117(a)(1) of the Government Code. To the extent the information we have marked pertains to licensed peace officers, county jailers, or commissioned security officers, and the individuals elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the information we have marked must be withheld under section 552.1175 of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code and the e-mail addresses you have marked

under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their disclosure.⁶ The remaining information must be released.⁷

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

⁶We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, an L-3 declaration under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations 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.

⁷We note the remaining information contains the requestor's client's motor vehicle record information, which is generally confidential under section 552.130 of the Government Code. *See* Gov't Code § 552.130(a)(1)-(2). However, because section 552.130 protects personal privacy, the requestor has a right to his client's motor vehicle record information under section 552.023 of the Government Code. *See id.* § 552.023(a); ORD 481 at 4. As previously noted, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of requesting an attorney general decision. Additionally, we note section 552.130(c) of the Government Code authorizes a governmental body to redact information protected by section 552.130(a)(1) without the necessity of requesting a decision under the Act. Gov't Code § 552.130(c). Thus, if the department receives another request for this same information from a person who does not have such a right of access, Open Records Decision No. 684 authorizes the department to redact the Texas license plate number, and section 552.130(c) authorizes the department to redact the driver's license number, without the necessity of requesting an attorney general decision.

Ref: ID# 465936

Enc. Submitted documents

c: Requestor
(w/o enclosures)