



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2012

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2012-16951

Dear Ms. Byles:

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# 468673 (ORR# W019065).

The City of Fort Worth (the "city") received a request for all information pertaining to current, sustained complaints resulting in legal action against the city or any of its departments or department heads, including criminal or civil actions against three named employees and actions pertaining to evidence tampering and official oppression, including a specified case. The request also seeks the city's policy on official oppression. You state the city will release most of the requested information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code, as well as privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The city received the request for information on August 1, 2012. You do not inform us the city was closed for any business days between August 1, 2012, and August 22, 2012. Accordingly, you were required to provide the information required by section 552.301(e) by August 22, 2012. Although the city timely submitted some of the responsive information on August 22, 2012 (collectively, "Exhibit C"), we note the city submitted additional responsive information on September 7, 2012 ("Exhibit D"). *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to Exhibit D submitted on September 7, 2012.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. However, sections 552.101 and 552.130 of the Government Code can provide compelling reasons to overcome the presumption of section 552.302.<sup>2</sup> Thus, we will address the applicability of sections 552.101 and 552.130 to Exhibit D.

Next, we note portions of Exhibit C are subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

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<sup>2</sup>The 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).

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

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108; [and]

...

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

Gov't Code §§ 552.022(a)(1), (17). Portions of Exhibit C consist of completed evaluations and investigations that are subject to subsection 552.022(a)(1). Exhibit C also contains court-filed documents that are subject to subsection 552.022(a)(17). The city must release the completed evaluations and investigations pursuant to subsection 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* § 552.022(a)(1). The city must release the information subject to subsection 552.022(a)(17) unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). You seek to withhold the information subject to subsection 552.022(a)(1) under sections 552.103, 552.107, and 552.111 of the Government Code. However, sections 552.103, 552.107, and 552.111 are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 663 at 5 (1999) (governmental body may waive section 552.111), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the information subject to subsection 552.022(a)(1) may not be withheld under section 552.103, section 552.107, or section 552.111 of the Government Code. However, we note the Texas Supreme Court has held the Texas Rules of Evidence and Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your assertions of the attorney-client privilege under rule 503 of the Texas Rules of Evidence and the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure for the information subject to section 552.022(a)(1). Although you raise section 552.101 of the Government Code in conjunction with common-law privacy for some of the information subject to section 552.022(a)(17), we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Thus, the court-filed documents subject to section 552.022(a)(17) may

not be withheld under section 552.101 in conjunction with common-law privacy. We will address the applicability of sections 552.117 and 552.137 for the information subject to section 552.022 because these exceptions make information confidential under the Act.

Rule 192.5 of the Texas Rules of Civil Procedure encompasses the attorney work product privilege. For purposes of section 552.022 of the Government Code, information is confidential under rule 192.5 only to the extent the information implicates the core work product aspect of the work product privilege. *See* ORD 677 at 9-10. Rule 192.5 defines core work product as the work product of an attorney or an attorney's representative, developed in anticipation of litigation or for trial, that contains the mental impressions, opinions, conclusions, or legal theories of the attorney or the attorney's representative. *See* TEX. R. CIV. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under rule 192.5, a governmental body must demonstrate the material was (1) created for trial or in anticipation of litigation and (2) consists of the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *Id.*

The first prong of the work product test, which requires a governmental body to show the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate (1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation there was a substantial chance litigation would ensue, and (2) the party resisting discovery believed in good faith there was a substantial chance litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See Nat'l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204. The second part of the work product test requires the governmental body to show the materials at issue contain the mental impressions, opinions, conclusions, or legal theories of an attorney or an attorney's representative. *See* TEX. R. CIV. P. 192.5(b)(1). A document containing core work product information that meets both parts of the work product test is confidential under rule 192.5, provided the information does not fall within the scope of the exceptions to the privilege enumerated in rule 192.5(c). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

Furthermore, if a requestor seeks a governmental body's entire litigation file, the governmental body may assert the file is excepted from disclosure in its entirety because such a request implicates the core work product aspect of the privilege. *See* ORD 677 at 5-6. Thus, in such a situation, if the governmental body demonstrates the file was created in anticipation of litigation, this office will presume the entire file is within the scope of the privilege. *See* Open Records Decision No. 647 at 5 (1996) (citing *Nat'l Union Fire Ins. Co. v. Valdez*, 863 S.W.2d 458, 461 (Tex. 1993)) (organization of attorney's litigation file necessarily reflects attorney's thought processes); *see also* *Curry v. Walker*, 873 S.W.2d 379, 380 (Tex. 1994) (holding "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case").

You argue the information within Exhibit C-3 that is subject to section 552.022(a)(1) of the Government Code consists of privileged attorney work product. You indicate the request for information is so broad as to encompass the city attorney's entire prosecution file. You state the information subject to section 552.022(a)(1) constitutes or is part of the entire litigation file created by an attorney for the city. You state the information was prepared or compiled by a senior assistant city attorney in the course of preparing for anticipated litigation. You inform us the information reflects the opinions and mental impressions of attorneys for the city as to the veracity of the claims, the weight of evidence, the legal theories available to the parties, the instructions of precedent, and all other matters necessary to determine the city's litigation strategy and negotiation positions in the litigation at issue. Based on your representations and our review, we find you have demonstrated the applicability of the attorney work product privilege to the information subject to section 552.022(a)(1) in Exhibit C-3. Accordingly, the city may withhold the information at issue under rule 192.5 of the Texas Rules of Civil Procedure.<sup>3</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by section 143.089 of the Local Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257 (2000). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113,122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or are in the possession of the department because of its

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

*Id.* § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex.App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state the information submitted as Exhibit C-1 is maintained only in the internal personnel files maintained by the city's police department under section 143.089(g) for the officers at issue. You state the information at issue relates to internal affairs investigations in which the allegations were determined to be unfounded or in which the allegations did not result in disciplinary action against the officers at issue for purposes of chapter 143. Based on your representations, we find the city must withhold Exhibit C-1 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement Officer Standards and Education (“TCLEOSE”) under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the [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 information submitted under this subchapter.

Occ. Code § 1701.454. You argue Exhibit C-2 is confidential under section 1701.454 because it consists of information “related to the F-5 hearing for two individuals.” We note section 1701.454 is applicable only to a report or statement submitted to TCLEOSE under subchapter J of chapter 1701 of the Occupations Code. *See id.* § 1701.454(a). The only report or statement found in subchapter J is a Form F-5. *See id.* § 1701.452. Upon review, we find the F-5 forms contained within Exhibit C-2 reveal the officers at issue were terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, which are not protected by section 1701.454. *See* § 1701.454(a). Further, no portion of the remaining information at issue consists of an F-5 form. Thus, no portion of Exhibit C-2 may be withheld under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See id.* §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

(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). 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). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring 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 find a portion of Exhibit D, which we have marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See* Occ. Code § 159.002(c); Open Records Decision No. 565 at 7 (1990). Thus, the medical records we have marked must be withheld under section 552.101 of the Government Code in conjunction with the MPA, unless the city receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA.

The remaining information also contains L-2 Declaration of Medical Condition and 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 encompassed by section 552.101 of the Government Code. Section 1701.306 provides the following:

(a) [TCLEOSE] may not issue a license to a person 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 blood test or other medical test.

(b) An agency hiring a person for whom a license 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.

Occ. Code § 1701.306(a)-(b). The city must withhold the submitted L-2 and L-3 declaration forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations 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[.]

(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.

*Id.* § 1703.306(a), (b). The remaining information contains information acquired from a polygraph examination. The requestor does not fall within any of the categories of individuals who are authorized to receive the submitted polygraph information under section 1703.306(a). Accordingly, the city must withhold the polygraph information, which we have marked, under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

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

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

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Exhibit D contains records made and maintained by emergency medical services personnel. Upon review, we find section 773.091 is

applicable to the information we have marked. Thus, with the exception of the information subject to section 773.091(g), which is not confidential, the city must withhold the submitted EMS records, which we have marked, under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information protected by chapter 611 of the Health and Safety Code. Section 611.002 provides in pertinent part:

(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.

*Id.* § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; *see also* ORD 565. Upon review, we find a portion of the remaining information, which we have marked, consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, the city must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code unless the city receives consent for release of the information pursuant to sections 611.004 and 611.0045.

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. ORD 565. 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 the information we marked in Exhibit C consists of CHRI that must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. However, we find you have not demonstrated how any portion of Exhibit D consists of CHRI for purposes of chapter 411 of the Government Code, and the city may not withhold it under section 552.101 of the Government Code on that basis.

The remaining information contains fingerprints. Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, section 560.002 permits the disclosure of the fingerprint information at issue. Therefore, the city must withhold the fingerprint information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You claim section 552.101 of the Government Code in conjunction with common-law privacy for some of the remaining information. Common-law privacy 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 or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. 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. 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). However, information

concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* In addition, in Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy. ORD 393 at 2; *see also* Open Records Decision Nos. 440 (1986), 339 (1982); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). We note a court has held information that is a matter of public record may not be withheld under common-law privacy. *See Austin Chronicle Corp. v. City of Austin*, No. 03-08-00596-CV, 2009 WL 483232 (Tex. App.—Austin Feb. 24, 2009, no pet.) (mem. op., not designated for publication).

In *Austin Chronicle*, the court reviewed this office's conclusion that the governmental body must withhold an entire police report under common-law privacy because the requestor knew the names of the victims of alleged sexual assault. The court found although the report was not admitted into evidence at trial, there was undisputed evidence the general substance of the information in the report, including the names and testimony of two child victims, was a matter of public record because it was made public at trial. *Austin Chronicle*, 2009 WL 483232, at \*6. The requestor provided copies of published articles on the investigation and trial and transcript excerpts from the trial. *Id.* Accordingly, the court held because there was no evidence to show the information in the report had not been made public, the report was not excepted from public disclosure under section 552.101 in conjunction with common-law privacy, and the requestor was entitled to disclosure of the report. *Id.* at \*7-8. In reaching its conclusion, the court did not distinguish the report from the information it contains.

Upon review, we find the submitted information contains the identities of victims of sex-related offenses. The information submitted as Exhibit C-5 reveals three of the alleged victims of sexual assault filed suit against the city and a city employee in United States District Court, claiming violations of sections 1983 and 1985 of title 42 of the United States Code. The submitted pleadings filed by three of the alleged sexual assault victims reveal the identities of these three victims and reflect the details of the allegations. Thus, because the requested information contains information that is a matter of public record and pursuant to *Austin Chronicle*, we conclude the submitted information pertaining to the three victims who filed suit against the city is not protected by common-law privacy. However, you inform us the identities of the remaining victims of sexual assault have not been released in court-filed documents. Because the identities of the remaining victims are not a matter of public record, the identities of the remaining victims must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Additionally, we find portions of the remaining information, which we have marked, are highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the additional 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 of the remaining information 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.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). We have marked information that must be withheld under section 552.102(a) of the Government Code.

You claim section 552.111 of the Government Code for the remaining information in Exhibit C-3 not subject to section 552.022 of the Government Code and for some of the information in Exhibit C-4. Section 552.111 excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. Section 552.111 encompasses the attorney work product privilege found in rule 192.5 of the Texas Rules of Civil Procedure, which is discussed above. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000); Open Records Decision No. 677 at 4-8 (2002). Rule 192.5 defines work product as

(1) material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees, or agents; or

(2) a communication made in anticipation of litigation or for trial between a party and the party’s representatives or among a party’s representatives, including the party’s attorneys, consultants, sureties, indemnitors, insurers, employees or agents.

TEX. R. CIV. P. 192.5. A governmental body seeking to withhold information under this exception bears the burden of demonstrating the information was created or developed for trial or in anticipation of litigation by or for a party or a party’s representative. TEX. R. CIV. P. 192.5; ORD 677 at 6-8. In order for this office to conclude the information was made or developed in anticipation of litigation, we must be satisfied

a) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue; and b) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and [created or obtained the information] for the purpose of preparing for such litigation.

*Nat'l Tank Co. v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A "substantial chance" of litigation does not mean a statistical probability, but rather "that litigation is more than merely an abstract possibility or unwarranted fear." *Id.* at 204; ORD 677 at 7. Furthermore, as noted above, if a requestor seeks a governmental body's entire litigation file, the governmental body may assert the file is excepted from disclosure in its entirety because such a request implicates the core work product aspect of the privilege. *See* ORD 677 at 5-6. Thus, in such a situation, if the governmental body demonstrates the file was created in anticipation of litigation, this office will presume the entire file is within the scope of the privilege. *See* ORD 647 at 5; *see also Curry*, 873 S.W.2d at 380.

You inform us the remaining information in Exhibit C-3 consists of the remainder of the entire litigation file created by an attorney for the city. As noted above, you indicate the request for information is so broad as to encompass the city attorney's entire prosecution file, and you state the information at issue was prepared by a senior assistant city attorney in the course of preparing for anticipated litigation. You inform us the information reflects the opinions and mental impressions of attorneys for the city as to the veracity of the claims, the weight of evidence, the legal theories available to the parties, the instructions of precedent, and all other matters necessary to determine the city's litigation strategy and negotiation positions in the litigation at issue. Based on your representations and our review, we find you have demonstrated the applicability of the attorney work product privilege to the remaining information in Exhibit C-3. Accordingly, the city may withhold the remaining information in Exhibit C-3 under section 552.111 of the Government Code.

You also claim the attorney work product privilege of section 552.111 of the Government Code for portions of Exhibit C-4. You argue the information at issue contains the mental impressions and advice of a senior assistant city attorney that were created or developed for trial. Upon review, we find the city has demonstrated the applicability of the attorney work product privilege to some of the information at issue in Exhibit C-4, which we have marked. Thus, the city may withhold the information we marked in Exhibit C-4 under section 552.111 of the Government Code. However, the remaining information you seek to withhold on this basis was provided to the city by the opposing party to litigation. Thus, this information does not consist of materials created, mental impressions developed, or communications made by an attorney for the city so as to fall within the attorney work product privilege. Therefore, we find the city has failed to demonstrate the applicability of the attorney work-product privilege to the remaining information at issue, which we marked for release, and the city may not withhold that information under the work-product privilege of section 552.111 of the Government Code. However, we will consider your remaining arguments against disclosure of the information we marked.

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* ORD 676 at 6-7. 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, orig. proceeding). 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 claim section 552.107 of the Government Code for the remaining information in Exhibit C-4. You state the remaining information submitted as Exhibit C-4 was created and is maintained in the course of providing professional legal services to the city. You inform us the information was communicated to and from various attorneys for the city, acting in their capacities of providing professional legal services, and employees and officers of the city acting in their official capacities as clients or client representatives. You state the communications at issue were made for the purpose of facilitating the rendition of professional legal services to the city. You also inform us the information at issue was intended to be confidential and has remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to most of the remaining information in Exhibit C-4. However, as noted above, a portion of the information in Exhibit C-4, which we marked for release, was received from the opposing party to litigation, who is not a privileged party. Therefore, we conclude you have failed to establish how that information constitutes communications between or among city employees and attorneys for the purposes of section 552.107(1), and it may not be withheld on that basis. Accordingly, with the exception of the information we marked for release, the

city may withhold the remaining information in Exhibit C-4 under section 552.107 of the Government Code.<sup>4</sup>

You also claim section 552.103 of the Government Code for the remaining information in Exhibit C-4. Section 552.103 provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body claiming section 552.103 has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

You state, and provides documentation demonstrating, prior to the city's receipt of the instant request, twelve lawsuits were filed and currently pending against the city in federal court. Further, you state, and the submitted information demonstrates, the city is in litigation over the termination of a former city employee. Therefore, we agree litigation was pending on the date the city received the present request for information. We also find the information at issue pertains to the pending litigation. Thus, we find section 552.103 is applicable to the information at issue. As noted above, however, the information at issue was received from the opposing party. The purpose of section 552.103 of the Government Code is to enable a governmental body to protect its position in litigation by forcing parties seeking information

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<sup>4</sup>As our ruling is dispositive with respect to the information at issue, we need not address your remaining arguments against its disclosure.

relating to the litigation to obtain such information through discovery procedures. *See* ORD 551 at 4-5. Thus, once the opposing party in pending litigation has seen or had access to information that is related to the litigation, there is no interest in withholding such information from public disclosure under section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Accordingly, because the opposing party to litigation has seen the information at issue, it may not be withheld under section 552.103 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. 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). We also note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. We have marked information under section 552.117 that consists of the personal information of peace officers who were employed by the city and the information is held in the employment context. In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, to the extent the individuals whose information is at issue are no longer licensed peace officers as defined by article 2.12, then the city may not withhold the marked information under section 552.117(a)(2).

If the information we marked under section 552.117 pertains to individuals who are no longer licensed peace officers, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 of the Government Code. *See* Gov't Code § 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 be withheld under section 552.117(a)(1) only 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 no longer peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue are no longer peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).<sup>5</sup>

Some of the remaining information may be subject to section 552.1175 of the Government Code. 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[.]

(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). Some of the remaining information consists of the personal information of an individual who may be licensed as a peace officer of another law enforcement agency. Accordingly, if the individual to whom the marked information pertains is a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the city must withhold that information, which we have marked, under section 552.1175 of the Government Code. Conversely, if individual at issue is not a licensed peace officer, or if the individual is a licensed peace officer who does not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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<sup>5</sup>Regardless 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).

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 id.* § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

The remaining documents also include information that is subject to section 552.136 of the Government Code. Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

The remaining information contains e-mail addresses that are subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure.

The remaining information also includes military discharge records that are subject to section 552.140 of the Government Code, which provides, in part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

*Id.* § 552.140(a). Section 552.140 provides a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). We note the submitted DD-214 forms came into the city's possession on or after September 1, 2003. Thus, the city must withhold the submitted military discharge records, which we have marked, under section 552.140 of the Government Code.

We note some of the materials at issue may 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 within Exhibit C-3 that is subject to section 552.022(a)(1) of the Government Code under rule 192.5 of the Texas Rules of Civil Procedure. The city must withhold (1) Exhibit C-1 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (2) the marked medical records under section 552.101 of the Government Code in conjunction with the MPA, unless the city receives written consent for release of those records that complies with sections 159.004 and 159.005 of the MPA; (3) the marked L-2 and L-3 declaration forms under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (4) the marked polygraph information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (5) the marked EMS records under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code, with the exception of the information subject to section 773.091(g); (6) the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code unless the city receives consent for release of the information pursuant to sections 611.004 and 611.0045; (7) the information we marked in Exhibit C under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; (8) the fingerprint information we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (9) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (10) the marked dates of birth under section 552.102(a) of the Government Code. The city may withhold the remaining information not subject to section 552.022 of the Government Code in Exhibit C-3 and the information we marked in Exhibit C-4 under the attorney work product privilege of section 552.111 of the Government Code. With the exception of the information we marked for release, the city may withhold the remaining information in Exhibit C-4 under section 552.107 of the Government Code. To the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code. To the extent the individuals at issue are no longer peace officers as defined by article 2.12 and to the extent these individuals timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. To the extent the individuals to whom the marked information pertains are licensed peace officers who elect to restrict access to the information in accordance with section 552.1175(b), the city must withhold the information we marked under section 552.1175 of the Government Code. The city must also withhold (1) the motor vehicle record information we marked under section 552.130 of the Government Code; (2)

the insurance policy number we marked under section 552.136 of the Government Code; (3) the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure; and (4) the marked military discharge records under section 552.140 of the Government Code.<sup>6</sup> The remaining information must be released; however, any information that is subject to copyright may be released only in accordance with copyright law.<sup>7</sup>

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 468673

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>6</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code and a military discharge record under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>7</sup>We note the information being released contains social security numbers. As previously noted, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).