



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2012

Mr. Steven E. Meyer
Assistant City Attorney
Legal Division
Arlington Police Department
P.O. Box 1065, Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2012-17591

Dear Mr. Meyer:

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# 469817 (PD Reference 8728).

The Arlington Police Department (the "department") received a request for eight categories of information from a specified time period concerning automatic license plate readers. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.110, and 552.130 of the Government Code. You also inform us the release of some of this information may implicate the proprietary interests of PIPS Technology, Inc. ("PIPS"). Accordingly, you notified PIPS of the request for information and of the company's right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered your arguments and reviewed the submitted representative samples of information.¹

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, PIPS has not submitted comments to this office explaining why any of the information at issue should not be

¹We assume that 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 that those records contain substantially different types of information than that submitted to this office.

released. Therefore, we have no basis to conclude PIPS has a protected proprietary interest in this information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

Although the department argues some of the submitted information is excepted under section 552.110 of the Government Code, this exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Open Records Decision No. 319 (1982) (statutory predecessor to section 552.110 designed to protect third-party interests that have been recognized by courts). We have not received any arguments from PIPS explaining that any of the information at issue contains its trade secrets or its commercial or financial information. *See* Gov't Code § 552.305(d)(2)(B). Because PIPS has not demonstrated that any of the information at issue qualifies as a trade secret or that release of this information would result in substantial competitive harm, we conclude none of the information at issue may be withheld pursuant to section 552.110 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release

of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

You assert the release of the submitted information would complicate the department's law enforcement efforts related to crime prevention and detection by exposing investigative techniques and procedures concerning the department's use of automated license plate reader technology. You argue releasing this information would jeopardize officer safety and prevent the department from using automated license plate reader technology properly because individuals would know the number of department vehicles using this technology, the specific vehicles employing the technology, the location of the technology, certain IP addresses, the maximum capacities of automated license plate reader devices and systems, and any weaknesses in the technology. Based on your representations and our review, we find the information we have marked and indicated would interfere with law enforcement and crime prevention. Thus, the department may withhold this information under section 552.108(b)(1) of the Government Code.² However, we find you have not demonstrated the release of the remaining information would interfere with law enforcement or crime prevention. Consequently, the department may not withhold any of this information under section 552.108(b)(1).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov't Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in subchapter F of chapter 411 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. *See 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

²As our ruling for this information is dispositive, we need not address your remaining arguments against its release.

DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. You claim some of the remaining information consists of CHRI that is confidential under section 411.083. Upon review, however, we find you have failed to demonstrate the information at issue constitutes CHRI generated by either the NCIC or TCIC databases. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from 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 officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. *See id.* § 552.117(a). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. We note section 552.117 encompasses a cellular telephone or pager number if the cellular telephone or pager service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)*. We have marked cellular telephone and pager numbers in the remaining information under section 552.117 of the Government Code that must be withheld under section 552.117(a)(2) of the Government Code to the extent this information pertains to licensed peace officers currently or formerly employed by the department and the cellular telephone or pager services are not paid for by a governmental body.

To the extent section 552.117(a)(2) is not applicable to the cellular telephone and pager numbers we have marked under section 552.117, section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. As noted above, section 552.117 encompasses a cellular telephone or pager number if the cellular telephone or pager service is not paid for by a governmental body. *See ORD 506 at 5-6..* Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or 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 official or employee who did not timely request confidentiality under section 552.024. Thus, if the cellular telephone and pager numbers we have marked under section 552.117 are not protected by section 552.117(a)(2), the department must withhold this information under section 552.117(a)(1) of the Government Code to the extent it pertains to current or former department employees who timely requested confidentiality for their information under section 552.024 of the Government Code and the cellular telephone or pager services are not paid for by a governmental body.

Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). You raise this section for some of the remaining information. Upon review, we conclude the department must withhold the license plate numbers we have marked under section 552.130 of the Government Code.³ However, we find that none of the remaining information at issue is subject to this section. Accordingly, no portion of this information may be withheld under section 552.130.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address affirmatively consents to its release or the e-mail address is specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Upon review, we find the e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c) of the Government Code. *See id.* § 552.137(c). Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to disclosure.

In summary, the department may withhold the information we have marked and indicated under section 552.108(b)(1) of the Government Code. The cellular telephone and pager numbers we have marked under section 552.117 of the Government Code must be withheld under section 552.117(a)(2) of the Government Code to the extent this information pertains to licensed peace officers currently or formerly employed by the department and the cellular telephone or pager services are not paid for by a governmental body. If this information is not protected by section 552.117(a)(2) of the Government Code, the department must withhold it under section 552.117(a)(1) of the Government Code to the extent it pertains to

³We 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 Texas license plate number under section 552.130(a)(2) of the Government Code, without the necessity of requesting an attorney general decision.

current or former department employees who timely requested confidentiality for their information under section 552.024 of the Government Code and the cellular telephone or pager services are not paid for by a governmental body. The department must withhold the licence plate numbers we have marked under section 552.130 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners affirmatively consent to disclosure. The department must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 469817

Enc. Submitted documents

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