



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2013

Ms. Andrea D. Russell
Counsel for the City of Azle
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Fort Worth, Texas 76107

OR2013-00649

Dear Ms. Russell:

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# 475645.

The Azle Police Department (the "department"), which you represent, received a request for twenty-four categories of information regarding two specified investigations, police department standard operating procedure manuals, and the personnel files and disciplinary records of investigating police officers. You state the department will provide some of the requested information to the requestor. You state the department will redact information as permitted by Open Records Decision No. 684 (2009)¹ and sections 552.024,²

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas license plate numbers under section 552.130(a)(2) of the Government Code, e-mail addresses of members of the public under section 552.137 of the Government Code, direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy, W-2 and W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code, a Form I-9 and attachments under section 552.101 in conjunction with section 1324a of title 8 of the United States Code, and L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, without the necessity of requesting an attorney general decision.

²Section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former employee who properly elected to keep this information confidential. See Gov't Code § 552.024(c); see *id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor).

552.130,³ and 552.147⁴ of the Government Code. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.108, 552.119, and 552.152 of the Government Code.⁵ We have considered the exceptions you claim and reviewed the submitted information, portions of which consist of representative samples.⁶

Initially, we note portions of the submitted information, which we have marked, are not responsive to the present request for information because the information was created after the department received the request for information, or the information does not pertain to any of the categories of the request. This ruling does not address the public availability of non-responsive information, and the department need not release the marked information in response to this request. *See generally Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

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 other statutes make confidential, such as the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See Occ. Code §§ 151.001-168.202*. Section 159.002 of the MPA provides, in 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.

³Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described by subsections 552.130(a)(1) and (a)(3). Gov’t Code § 552.130(c); *see id.* §§ 552.130(d) (entitling requestor to appeal governmental body’s decision to withhold information pursuant to section 552.130(c) to attorney general), .130(e) (requiring governmental body that withholds information pursuant to section 552.130(c) to provide notice to requestor).

⁴Section 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 an attorney general decision under the Act. *See Gov’t Code § 552.147(b)*.

⁵Although you raise section 552.101 in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*. Furthermore, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See ORD 676 at 1-2*.

⁶We assume that the “representative samples” 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.

(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 that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. 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. Upon review, we find portions of the submitted information constitute confidential medical records. Accordingly, the information we have marked must be withheld under section 552.101 in conjunction with the MPA.⁷

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). Upon review, we find no portion of the submitted information consists of information acquired from a polygraph examination. Accordingly, the department may not withhold any of the submitted information under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of an F-5 form ("Report of Separation of Licensee") submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. We note the submitted information contains F-5 forms, some of which were created prior to the effective date of the amendment of section 1701.454 by the

⁷As our ruling is dispositive for this information, we need not address your argument against its disclosure.

Seventy-ninth Legislature. *See* Act of May 25, 2005, 79th Leg., R.S., ch. 1298, § 4, 2005 Tex. Gen. Laws 4094, 4096. The documents created prior to 2005 are governed by the previous version of section 1701.454. *See id.* § 6.⁸ 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) All information 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.

⁸Section 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.

(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.

Id. The submitted F-5 forms do not appear to be subject to release under either version of the statute. Therefore, the department must withhold the submitted F-5 forms, which we have marked, under section 552.101 in conjunction with section 1701.454 of the Occupations Code.⁹

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code, which 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.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find the information we have marked consists of confidential mental health records that are subject to chapter 611 of the Health and Safety Code. Accordingly, the information we have marked must be withheld under section 552.101 in conjunction with chapter 611 of the Health and Safety Code.¹⁰

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which pertains to criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See Gov’t Code* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). 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

⁹As our ruling is dispositive for this information, we need not address your arguments against its disclosure.

¹⁰As our ruling is dispositive for this information, we need not address your arguments against its disclosure.

not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-127. Similarly, 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 have marked consists of confidential CHRI, and the department must withhold the marked information under section 552.101 in conjunction with chapter 411. However, we find no portion of the remaining information consists of CHRI for the purposes of chapter 411, and the department may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 also encompasses section 418.176 of the Texas Homeland Security Act, chapter 418 of the Government Code (the "HSA"). Section 418.176(a) provides the following:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). The fact that information may relate to a governmental body's security concerns or emergency management activities does not make the information *per se* confidential under the HSA. *See Open Records Decision No. 649 at 3 (1996)* (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See Gov't Code § 552.301(e)(1)(A)* (governmental body must explain how claimed exception to disclosure applies).

You state the information you have marked in Exhibit B-5 consists of the department's "All Hazards Plan." You state this document "sets out exactly how the department would

coordinate its immediate response,” and includes information “concerning its efforts to maintain law and order” in the event of an act of terrorism. Based on your representations and our review of the information at issue, we agree the information you have marked in Exhibit B-5 relates to a tactical plan of an emergency response provider and is maintained for the purpose of responding to an act of terrorism or related criminal activity. *See id.* § 418.176(a). Accordingly, we find the department must withhold the information you have marked in Exhibit B-5 under section 552.101 in conjunction with section 418.176 of the Government Code.¹¹

Section 552.101 of the Government Code also encompasses the common-law right of 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 satisfied. *Id.* at 681-82. This office has found that 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 No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, this office has found financial information that does not relate to a financial transaction between an individual and a governmental body ordinarily satisfies the first requirement of the test for common-law privacy. For example, information related to an individual’s mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545 (1990), 23 (1989); *see also* ORD 600 (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs are protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing employee participation in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Whether the public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Accordingly, this information must be withheld under section 552.101 in conjunction with common-law privacy.¹² However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern.

¹¹As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

¹²As our ruling is dispositive for this information, we need not address your argument against its disclosure.

Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988)*. However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *Open Records Decision No. 549 at 5 (1990)*. We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See Open Records Decision No. 208 at 1-2 (1978)*. Upon review, we find the department has failed to demonstrate any portion of the submitted information identifies an informer for the purposes of the common-law informer's privilege, and the department may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.102(a) 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). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101, which is noted above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, *writ ref'd n.r.e.*), the 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*, 354 S.W.3d at 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. Upon review, we find the department must withhold the dates of birth you have marked, and the additional dates of birth we have marked, under section 552.102(a) of the Government Code.

Section 552.107(1) of the Government Code protects information coming 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. 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. 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. *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 a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. 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. *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). Upon review, we find you have failed to demonstrate any portion of the submitted information consists of an attorney-client privileged communication for the purposes of section 552.107(1) of the Government Code. Accordingly, the department may not withhold any portion of the submitted 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 in Exhibit B-4 under section 552.108(a)(1) pertains to pending criminal investigations and prosecutions. Based on your representation and our review of the information, we conclude release of this information would interfere with the

detection, investigation, or prosecution of a crime. *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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we find section 552.108(a)(1) applies to this information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the information you have marked in Exhibit B-4 under section 552.108(a)(2) relates to cases that resulted in an outcome other than conviction or deferred adjudication. Based on your representation and our review, we find section 552.108(a)(2) applies to this information.

We note, however, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *Id.* § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*, and includes the identities of investigating officers and a sufficient portion of the narrative to encompass a detailed description of the offense. *See* 531 S.W.2d at 186-88. Therefore, with the exception of basic information, which must be released, the department may withhold the information you have marked in Exhibit B-4 under sections 552.108(a)(1) and (a)(2) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). 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 Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). 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 section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known

policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information you have marked in Exhibit B-5 under section 552.108(b)(1) consists of portions of the department's general orders. You state release of this information, which includes policies pertaining to weapon and uniform requirements, emergency response procedures, use of force, pursuit procedures, search and seizure and arrest without a warrant, and certain investigation procedures, "would unduly interfere with law enforcement by placing individuals at an advantage in a confrontation with police officers." Based on your representations and our review, we find release of most of the information at issue would interfere with law enforcement. However, we find some of the information you have marked under section 552.108(b)(1) consists of generally known policies and procedures. The department may not withhold this information, which we have marked for release, under section 552.108(b)(1) of the Government Code. Thus, with the exception of the information we have marked for release, the department may withhold the information you have marked in Exhibit B-5 under section 552.108(b)(1) of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.¹³ *See* Gov't Code § 552.1175. Section 552.1175 also encompasses a cellular telephone number, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure." Gov't Code § 552.1175(a)(1). Upon review, we have marked information that is subject to section 552.1175. If the individuals whose information is at issue are currently licensed peace officers and if they elect to restrict access to the information pertaining to them in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if the cellular telephone services are not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a 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(a)(2). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

¹³The 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).

Section 552.136 of the Government Code provides in part that “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the department must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

Section 552.152 of the Government Code provides in pertinent part:

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

Id. § 552.152. You inform us some of the submitted information relates to undercover police officers, and you seek to withhold Exhibit B-2 in its entirety, and the information you have marked in Exhibits B-3 and B-4, under section 552.152. You state release of this information would subject the officers at issue to a substantial threat of physical harm. Upon review, we find you have failed to demonstrate that release of Exhibit B-2 in its entirety would subject the officers at issue to a substantial threat of physical harm, and the department may not withhold Exhibit B-2 in its entirety under section 552.152. Additionally, we find some of the information you have marked in Exhibits B-2 and B-3 does not identify an undercover police officer. Accordingly, the department may not withhold this information, which we have marked for release. Based upon your representations and our review, we find release of the remaining information you have marked in Exhibits B-2, B-3 and B-4, and the additional information we have marked, would subject the officers at issue to a substantial threat of physical harm. Therefore, with the exception of the information we have marked for release, the department must withhold the information you marked in Exhibits B-2, B-3, and B-4, and the additional information we have marked, under section 552.152 of the Government Code.¹⁴

You state some of the remaining information may be subject to 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.

¹⁴As our ruling is dispositive for this information, we need not address your remaining argument against its release.

In summary, the department must withhold under section 552.101 of the Government Code the following: the information we have marked under the MPA, section 1701.454 of the Occupations Code, chapter 611 of the Health and Safety Code, chapter 411 of the Government Code, the information you have marked in Exhibit B-5 under section 418.176 of the Government Code, and the information we have marked under common-law privacy. The department must withhold the dates of birth you and we have marked under section 552.102(a) of the Government Code. With the exception of basic information, the department may withhold the information you have marked in Exhibit B-4 under sections 552.108(a)(1) and (a)(2) of the Government Code. With the exception of the information we have marked for release, the department may withhold the information you have marked in Exhibit B-5 under section 552.108(b)(1) of the Government Code. If the individuals whose information is at issue are currently licensed peace officers and if they elect to restrict access to the information pertaining to them, the department must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if the cellular telephone services are not paid for by a governmental body. The department must withhold the motor vehicle record information we have marked under section 552.130(a)(2) of the Government Code and the insurance policy numbers we have marked under section 552.136 of the Government Code. With the exception of the information we have marked for release, the department must withhold the information you have marked in Exhibits B-2, B-3, and B-4, and the additional information we have marked, under section 552.152 of the Government Code. The remaining information must be released, but any information subject to copyright may only be released in accordance with copyright law.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 475645

Enc. Submitted documents

c: Requestor
(w/o enclosures)