



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2013

Ms. Donna L. Johnson
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2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2013-16025

Dear Ms. Johnson:

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# 499294 (ORR# COHM13-026).

The Humble Police Department (the "department"), which you represent, received a request for the personnel file of a named department officer. You state the department has released some of the requested information. You state the department will withhold e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009) and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, 552.117, 552.1175, and 552.130 of the Government Code.² Additionally, you provide documentation showing you have notified the named officer of his right to submit comments to this office why some

¹Open Records Decision No. 684 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, without the necessity of requesting an attorney general decision. 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).

²Although you do not argue section 552.130 of the Government Code in your brief, we understand you to raise this exception based on your markings.

of the submitted information should not be released.³ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(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[.]

Id. § 552.022(a)(1). The submitted information includes completed investigations that are subject to subsection 552.022(a)(1). The department must release the completed 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.* You seek to withhold portions of the information subject to subsection 552.022(a)(1) under section 552.111 of the Government Code. However, section 552.111 is a discretionary exception and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111). Therefore, the information subject to subsection 552.022(a)(1) may not be withheld under section 552.111 of the Government Code. However, as information subject to subsection 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument under section 552.108 for the information at issue. Further, as section 552.101 of the Government Code applies to confidential information and as sections 552.102, 552.117, and 552.130 of the Government Code make information confidential under the Act, we will consider the applicability of sections 552.101, 552.102, 552.117, and 552.130 to the information at issue.

We first address your argument under section 552.108 of the Government Code, as it is potentially the most encompassing. Section 552.108(b)(1) 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 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would

³As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

interfere with law enforcement. See Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706. 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." See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded 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 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. See *City of Fort Worth*, 86 S.W.3d 320; *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); see also Open Records Decision No. 350 at 3-4 (1982). We further note section 552.108(b)(1) is not applicable 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 argue most of the submitted information is subject to subsection 552.108(b)(1) of the Government Code. You state some of the information at issue consists of assigned duty hours and locations of off-duty officers and reveals the occasions on which certain businesses take extra security measures. You further state the information at issue contains "highly specific guidelines for police officers confronted by violence or threatened violence when [e]ffecting an arrest or protecting the public safety." You argue release of the information at issue would interfere with law enforcement and may jeopardize officer safety, and may equip the public, and particularly criminals, with guidance as to the type of conduct that an officer must tolerate before he may exercise the use of force, and encourage such individuals to tailor their behavior accordingly. Upon review, we find the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. See, e.g., Open Records Decision No. 456 (1987) (holding that forms indicating location of uniformed, off-duty police officers are excepted from disclosure under statutory predecessor to section 552.108 due to officer safety concerns). However, we find the remaining information at issue consists of internal investigations conducted by the department. You do not state the internal investigations resulted in criminal investigations. Thus, we find you have not demonstrated how release of any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining 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 information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Portions of the submitted information involve juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision" for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply to the information at issue. Therefore, the department must withhold the information at issue, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Upon review, however, we find no portion of the remaining information consists of juvenile law enforcement records for purposes of section 58.007. Therefore, none of the remaining information is confidential pursuant to section 58.007, and the department may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Id. § 261.201(a). Portions of the remaining information relate to investigations of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Accordingly, we find this information, which we have marked, is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the information we marked is confidential pursuant to section 261.201 of the Family Code, and the department must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Upon review, however, we find you have failed to demonstrate how any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established any of the remaining information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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* Occ. Code §§ 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). Information 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. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). 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 some of the submitted information, 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. Accordingly, the department must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have not demonstrated how any portion of the remaining submitted information consists of medical records for purposes of the MPA, and the department may not withhold any of the remaining information under section 552.101 on that basis.

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* Gov’t Code § 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. 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 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 you have not demonstrated how any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the department may not withhold it under section 552.101 of the Government Code on that basis.

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

Section 552.101 of the Government Code also encompasses common-law privacy, which 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, criminal history information provided by a department officer as part of an application for employment with the department was not compiled by any governmental body. Further, when an officer's criminal history information is compiled in

the course of the officer's pre-employment screening, there is a legitimate public interest in the information. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Further, this office has determined common-law privacy generally protects the identities of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c). We note the scope of a public employee's privacy is narrow. *See* Open Records Decision No. 423 at 2 (1984). We further note information relating to domestic violence is generally not protected by common-law privacy. *See* Open Records Decision No. 611 at 1 (1992) (family violence is a crime, not a private matter). Moreover, we note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). Determinations under common-law privacy must be made on a case-by-case basis. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); ORD 373 at 4.

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. We further find one of the submitted video recordings contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. You inform us the department does not possess the technological capability to redact information from video files. Thus, we find the department must withhold the entire video recording at issue, which we have noted, under section 552.101 of the Government Code in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983). However, in this instance, we find there is a legitimate public interest in portions of the remaining information you have marked. Further, we find you have not demonstrated how any of the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make

certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find you have failed to demonstrate how any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 on the basis of constitutional 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). Thus, under *Texas Comptroller* section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. Having carefully reviewed the information at issue, we have marked information that must be withheld under section 552.102(a) of the Government Code. However, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the department may not withhold any of the remaining information on that basis.

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 have marked information under section 552.117 that consists of the personal information of peace officers who are or were employed by the department and the information is held in the employment context. In this instance, however, it is unclear whether the named department officer whose information has been requested is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the officers whose information is at issue are currently licensed peace officers as defined by article 2.12, the department must withhold the information we marked under

section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the department officers whose information is at issue are no longer licensed peace officers as defined by article 2.12, the department may not withhold the marked information under section 552.117(a)(2). Upon review, however, we find the remaining information at issue does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former department officer, and the remaining information at issue may not be withheld under section 552.117(a)(2).

If the information we marked under section 552.117 pertains to a former department officer who is no longer a licensed peace officer, then the marked information is 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. The submitted documentation reveals the named department officer timely elected confidentiality for his personal information pursuant to section 552.024. Therefore, to the extent the department officer at issue is no longer a peace officer as defined by article 2.12, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. Upon review, however, we find the remaining information at issue does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former department employee, and the remaining information at issue may not be withheld under section 552.117(a)(1).

Some of the remaining information may be subject to section 552.1175 of the Government Code. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, 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. Act of May 26, 2013, 83rd Leg., R.S., H.B. 1632, § 3 (to be codified as an amendment to Gov't Code § 552.1175); Act of May 26, 2013, 83rd Leg., R.S., H.B. 2733, §§ 3-4 (to be codified at Gov't Code § 552.1175(a)(10)-(12)). We note section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Upon review, we find the information we have marked consists of the home address, home telephone number, emergency contact

information, social security number, or family member information of individuals who may be among the types of individuals listed in section 552.1175(a), and the information is not held by the department in an employment capacity. Thus, if the information we marked relates to individuals to whom section 552.1175 applies and the individuals elect to restrict access to the information in accordance with section 552.1175(b), then the department must withhold the marked information under section 552.1175; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. If the individuals at issue are not individuals to whom section 552.1175 applies or if no election is made, the department may not withhold the marked information under section 552.1175. You have not demonstrated how any portion of the remaining information pertains to the types of individuals to whom section 552.1175 applies. As such, the department may not withhold any of the remaining information on this basis.

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, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. You state the department will withhold motor vehicle record information pursuant to subsection 552.130(c) of the Government Code.⁴ Upon review, we find portions of the remaining information consist of motor vehicle record information. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. We also find some of the submitted audio and video recordings, which we have noted, contain motor vehicle record information. As noted above, you state the department does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the entire video recordings containing Texas motor vehicle record information, which we have noted, under section 552.130 of the Government Code. *See* ORD 364. You also state the department does not possess the technological capability to redact information from audio files. However, because the department had the ability to copy the submitted audio recordings in order to submit them for our review, we believe the department has the capability to produce a copy of only the non-confidential portions of the audio recordings. We find you have not demonstrated how any of the remaining information you marked consists of motor vehicle record information. Further, we find the remaining submitted audio and video recordings do not contain information subject to section 552.130. Accordingly, the department may not withhold any of the remaining information at issue under section 552.130.

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

You argue 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 department (1) may withhold the information we marked under section 552.108(b)(1) of the Government Code; (2) must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (3) must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (4) must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA; (5) must withhold the CR-3 accident reports we marked under section 552.101 of the Government Code in conjunction with section 550.065 of the Transportation Code; (6) must withhold the information we marked, and the entirety of the video recording we noted, under section 552.101 of the Government Code in conjunction with common-law privacy; (7) must withhold the dates of birth we marked under section 552.102(a) of the Government Code; (8) must withhold the information we marked under section 552.117(a)(2) 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, but may withhold the marked cellular telephone numbers only if a governmental body does not pay for the cellular telephone service; (9) must withhold the information we marked under section 552.117(a)(1) of the Government Code, to the extent the department officer at issue is no longer a peace officer as defined by article 2.12; (10) must withhold the information we marked under section 552.1175 if the marked information relates to an individual to whom section 552.1175 applies and the individual elects to restrict access to the information in accordance with section 552.1175(b), but may withhold the marked cellular telephone numbers only if a governmental body does not pay for the cellular telephone service; and (11) must withhold the motor vehicle record information we marked and noted, and must withhold the entireties of the submitted video recordings we noted, under section 552.130 of the Government Code. The remaining information must be released; however, any information that is subject to copyright may be released only 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to 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# 499294

Enc. Submitted documents

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