



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2014

Ms. Cheryl Elliott Thornton
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2014-00714

Dear Ms. Thornton:

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# 510616 (CAO File No. 13PIA0552).

The Harris County Sheriff's Office (the "sheriff's office") received a request for any and all records or documents relating to a named deputy, including personnel records, disciplinary records, internal affairs records, and complaints and investigations. You claim the submitted information is exempted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.111, 552.117, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes an officer's Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") identification number. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand the officer's TCLEOSE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the TCLEOSE website. Thus, we find the TCLEOSE number we have marked does not constitute public information under section 552.002 of the Government Code. Therefore,

the TCLEOSE number we have marked is not subject to the Act and need not be released to the requestor.

Next, we note the submitted information includes multiple closed internal investigation files. Section 552.022(a)(1) of the Government Code provides for the required disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Although you assert this information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Therefore, the sheriff's office may not withhold the information at issue under section 552.103 or section 552.111 of the Government Code. However, as information subject to section 552.022(a)(1) may be excepted by section 552.108, we will consider your argument under section 552.108 of the Government Code for the information subject to section 552.022. *See* Gov't Code § 552.022(a)(1). Further, sections 552.101, 552.102, 552.117, and 552.1175 make information confidential under the Act. Additionally, we note portions of the information at issue are subject to sections 552.130 and 552.139, which make information confidential under the Act.¹ Accordingly, we will also consider the applicability of these exceptions to the information subject to 552.022 of the Government Code. We will also consider your arguments under sections 552.103 and 552.111, as well as your other claimed exceptions, for the remaining information not subject to section 552.022 of the Government Code.

First, you claim the information not subject to section 552.022 of the Government Code is excepted under section 552.103 of the Government Code, which provides, in relevant part, as follows:

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

...

¹ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470.

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

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

To establish litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, or when an individual threatened to sue on several occasions and hired an attorney. *See* Open Records Decision Nos. 346 (1982), 288 (1981). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

In this instance, you generally state, "To the extent that the records requested are records commensurate to a contested case which fall under the Administrative Procedure Act [(the "APA")], the Governmental Code [sic] chapter 2001 [] defines these actions as 'litigation.'" *Cf.* Open Records Decision No. 588 (1991) (contested case under APA constituted litigation for purposes of statutory predecessor to Gov't Code § 552.103). You further state, "[P]ursuant to the test, information commensurate to the internal affairs investigation and proceedings are adversarial and, therefore, fall within the scope of 'litigation.'" Thus, we understand you to indicate the information at issue may relate to an internal affairs investigation or to a proceeding under the APA. However, you have failed to provide any arguments explaining how this information is related to any specific litigation that was

pending or reasonably anticipated on the date of the sheriff's office's receipt of the request. Consequently, we find the sheriff's office may not withhold any portion of the information at issue under section 552.103 of the Government Code.

You also assert the information not subject to section 552.022 of the Government Code is excepted from disclosure under section 552.111 of the Government Code, which excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 31 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You assert the information at issue should be protected under section 552.111 because you argue "the records requested clearly show the deliberative process as well as interagency and intra-agency discussion." However, we note the information at issue pertains to personnel matters concerning only the named sheriff's office deputy. You have not demonstrated how this information involves policymaking pertaining to personnel matters of a broad scope. Therefore, the sheriff's office may not withhold any of the submitted information under section 552.111 of the Government Code.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An 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 is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Subsection 552.108(a)(1) protects information if its release would interfere with a particular pending criminal investigation or prosecution. Subsection 552.108(b)(1) protects internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code § 552.301(e)(1)(A)*; *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *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).

As previously noted, the submitted information includes multiple completed internal affairs investigations. Although you imply the information at issue pertains to a pending criminal investigation, you have not informed us of an active criminal investigation or prosecution that has resulted from or is related to the internal affairs investigations. You have also not informed us of an active criminal investigation or prosecution that has resulted from any of the remaining information. Accordingly, we find the sheriff's office has failed to demonstrate the applicability of section 552.108(a)(1) to any portion of the submitted information. Therefore, the sheriff's office may not withhold the any of the submitted

information under section 552.108(a)(1) of the Government Code. Further, we find you have failed to demonstrate how the release of any portion of the submitted information would interfere with law enforcement or prosecution efforts in general. Accordingly, the sheriff's office may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

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 section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 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 when the conduct occurred. *See* Fam. Code § 51.02(2). Section 58.007 provides, in pertinent part:

(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.

Id. § 58.007(c). Incident report number 09-121706, offense report number 121421009 and its related photographs, and portions of the submitted audio dispatch recording involve a child engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. As such, this information constitutes juvenile law enforcement records that are confidential pursuant to section 58.007(c). It does not appear that any of the exceptions to confidentiality under section 58.007 apply in this instance. Accordingly, the sheriff's office must withhold incident report number 09-121706, offense report number 121421009 and its related photographs, and any portion of the submitted audio dispatch recording that refers to the incident in these reports, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides, "[a] biometric identifier in the possession of

a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). There is no indication the requestor has a right of access to the submitted fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Accordingly, the sheriff’s office must withhold the submitted fingerprints, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.²

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306 provides as follows:

(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 other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member’s agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner’s activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(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.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review, we find some of the submitted information, which we have marked, consists of information acquired from a polygraph examination subject

² We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code, without the necessity of requesting an attorney general decision.

to section 1703.306. The requestor does not appear to fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the sheriff's office must withhold the marked polygraph information under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI the 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) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). We note section 411.083 does not apply to active warrant information or other information relating to one's current involvement in 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 constitutes confidential CHRI. This information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 also encompasses the doctrine of 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. 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 also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Additionally, this office has found a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy

interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. Further, this office has found common-law privacy generally protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007(c). 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); Open Records Decision No. 373 at 4 (1983). However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. See Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (scope of public employee privacy is narrow).

Upon review, we find a portion of the information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the sheriff's office must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate how the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, none of the remaining information at issue 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 Open Records Decision No. 455 at 4 (1987). 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 reviewing the remaining information, 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 sheriff's office may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

You claim section 552.101 of the Government Code in conjunction with the constitutional doctrine embodied in *Garrity v. New Jersey*, 385 U.S. 493 (1967) for portions of the submitted information. *Garrity* dealt with the constitutional prohibition against

self-incrimination in court or other judicial proceedings. *See* 385 U.S. at 493. Thus, *Garrity* is not applicable here because the submitted information is subject to release in response to a request under the Act and not used as evidence in a criminal prosecution or other judicial proceeding. Therefore, we find this case provides no basis for withholding any portion of the submitted information.

Section 552.102(a) of the Government Code exempts 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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code as discussed 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 v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of section 552.102, and held section 552.102(a) exempts 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 information we have marked is subject to section 552.102(a) of the Government Code and must be withheld on that basis. No portion of the remaining information may be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code exempts 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 encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Therefore, the sheriff’s office must withhold the information we have marked, including the marked cellular telephone numbers and pager numbers if the service was paid for with personal funds, under section 552.117(a)(2) of the Government Code. However, you have failed to establish section 552.117(a)(2) is applicable to any of the remaining information, and the sheriff’s office may not withhold it on that basis.

Section 552.1175 of the Government Code 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. Gov't Code § 552.1175. 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 relates to peace officers who are employed by other law enforcement agencies. Accordingly, to the extent the peace officers whose information is at issue elect to restrict access to their information in accordance with section 552.1175(b), the sheriff's office must withhold the marked information under section 552.1175; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. If no election is made, the sheriff's office may not withhold the marked information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license or permit, motor vehicle title or registration, and personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the sheriff's office must withhold the motor vehicle record information we have marked and indicated under section 552.130.³

Section 552.139(b)(3) of the Government Code provides, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. Gov't Code § 552.139(b)(3). Therefore, the sheriff's office must withhold the photocopies of the police officer's identification card and the police officer's identification badge that we have marked under section 552.139(b)(3) of the Government Code.

In summary, the TCLEOSE number we have marked is not subject to the Act and need not be released. The sheriff's office must withhold (1) incident report number 09-121706, offense report number 121421009 and its related photographs and any portion of the submitted audio dispatch recording that refers to the incident in these reports, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) the marked fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (3) the marked polygraph information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (4) the CHRI we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code; (5) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (6) the information we marked under section 552.102(a) of the Government Code; (7) the information we marked under section 552.117(a)(2) of the Government Code; (8) the information we marked under section 552.1175 of the Government Code, to the extent the peace officers whose

³ We note section 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* 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 id.* § 552.130(d), (e).

information is at issue elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code; (9) the motor vehicle record information we marked and indicated under section 552.130 of the Government Code; and (10) the photocopies of the police officer's identification card and the police officer's identification badge that we have marked under section 552.139(b)(3) of the Government Code. The remaining information must be released.⁴

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,



Alia K. Plasencia-Bishop
Assistant Attorney General
Open Records Division

AKPB/tch

Ref: ID# 510616

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ We note the information being released contains social security numbers. 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).