



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2014

Ms. Rachel L. Lindsay  
Counsel for the City of Ferris  
Brown & Hofmeister  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2014-05541

Dear Ms. Lindsay:

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# 518555.

The City of Ferris (the "city"), which you represent, received a request for the personnel file of a named former city police officer. You inform us some of the requested information will be released to the requestor upon payment of costs. You inform us you will redact information in accordance with section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.115, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note the submitted information contains a peace 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 an officer's TCLEOSE

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<sup>1</sup>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 under the Act. Gov't Code § 552.147(b).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

identification number is a unique computer-generated number assigned to peace officers for identification in the TCLEOSE electronic database and may be used as an access device number on the TCLEOSE website. Accordingly, we find the officer's TCLEOSE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCLEOSE identification number is not subject to the Act and need not be released to the requestor.<sup>3</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, including section 1324a of title 8 of the United States Code. Section 1324a governs I-9 forms and their related documents. This section provides an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the submitted I-9 form in this instance would be "for purposes other than enforcement" of the referenced federal statutes. Accordingly, we conclude the submitted I-9 form, which we have marked, is confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns). Section 6103(b) defines the term "return information" as:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding

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<sup>3</sup>As we are able to make this determination, we need not address your argument against the disclosure of this information.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including a Form I-9 and attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

a taxpayer's liability under title 26 of the United States Code. *See Chamberlain v. Kurtz*, 589 F.2d 827, 840-41 (5th Cir. 1979); *Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the information we have marked constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also encompasses 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). Upon review, we find the information we have marked constitutes medical records. Accordingly, the city must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.<sup>6</sup> However, we find none of the remaining information consists of medical records

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information. We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including W-2 and W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

subject to the MPA; accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which makes L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCLEOSE confidential. Section 1701.306 provides the following:

(a) [TCLEOSE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Therefore, the city must withhold the submitted L-2 and L-3 declaration forms in Exhibit G under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>7</sup>

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to TCLEOSE under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

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<sup>7</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306(b) of the Occupations Code.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release information submitted under this subchapter.

*Id.* § 1701.454. The submitted information contains F-5 Reports of Separation of Licensee. The information at issue does not indicate the named officer resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, the city must withhold the F-5 reports we have marked in Exhibit F under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. However, we find none of the remaining information in Exhibit F was submitted to TCLEOSE pursuant to subchapter J of chapter 1701 of the Occupations Code. Accordingly, the city may not withhold any of the remaining information under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person 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.

*Id.* § 1703.306. Upon review we find the information we have marked constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the requestor falls into any of the categories

of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. However, we find none of the remaining information was acquired from a polygraph examination; accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code 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. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). 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). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We note section 411.083 does not apply to active warrant information or other information relating to an individual's current involvement in the criminal justice system. *Id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement with the criminal justice system). Further, CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes confidential CHRI. The city must withhold this information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law.<sup>8</sup> However, we find none of the remaining information constitutes confidential CHRI; accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 611.002 of the Health and Safety Code. Section 611.002 of the Health and Safety Code provides, "[c]ommunications between a patient and a professional, and records of the identity,

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<sup>8</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002; *see also id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals, including “a person who has the written consent of the patient, or a parent if the patient is a minor [.]” *See id.* §§ 611.004(a)(4), 611.0045; ORD 565. We have marked a mental health record that is confidential under section 611.002 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code.<sup>9</sup>

Section 552.101 of the Government Code 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 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) (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, information relating to an individual’s current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See Gov’t Code* § 441.081(b). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public

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<sup>9</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 on that basis.

Section 552.108(b)(1) of the Government Code excepts from required public disclosure an internal record of a law enforcement agency 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); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Gov’t Code § 552.301(e)(1)(A); *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); *see also Ex parte Pruitt*, 551 S.W.2d 706; Open Records Decision Nos. 562 at 10 (1990), 531 at 2. 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). 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 remaining information in Exhibit H consists of records of inquiries made via the Texas Law Enforcement Telecommunications System (“TLETS”). You argue release of the information would “unduly complicate the law enforcement efforts of the [city’s police] department, as well as those of other state law enforcement agencies that utilize the TLETS system, by exposing the [city’s police] department’s and other agencies’ investigative techniques and procedures.” We note the information at issue consists of driver’s license inquiries and warrant checks by the city’s police department. Upon review, we find you have not demonstrated how the release of any of the information at issue in Exhibit H would interfere with law enforcement or crime prevention. Accordingly, the city may not withhold

any of the remaining information in Exhibit H under section 552.108(b)(1) of the Government Code.

You inform us the information in Exhibit L consists of internal policies and procedures of the city's police department. You state portions of the information at issue relate to "training tactics and internal controls that specifically govern the conduct and practices of the [city's] police department," and release of this information would "place individuals who are in a confrontation with police at an advantage." Based on your representations and our review, we have marked information the city may withhold under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated that release of any of the remaining information in Exhibit L would interfere with law enforcement or crime prevention. Therefore, the city may not withhold any of the remaining information in Exhibit L under section 552.108(b)(1) of the Government Code.

Next, you assert the submitted birth certificate is excepted from disclosure under section 552.115 of the Government Code. Section 552.115 excepts from disclosure "[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]" Gov't Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because it is maintained by the city, the submitted birth certificate may not be withheld under section 552.115 of the Government Code.

You indicate you will redact information subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001).<sup>10</sup> We have marked and indicated additional information which may be subject to section 552.117(a)(2). Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, 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 section 552.024 of the Government Code or section 552.1175 of the Government Code.<sup>11</sup> Gov't Code § 552.117(a)(2). We note section 552.117 also 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). Accordingly, to the extent the information we have marked and indicated pertains to a licensed peace officer, the city must withhold that information under section 552.117(a)(2) of the Government Code; however, the marked cellular

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<sup>10</sup>Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670 at 6.

<sup>11</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

telephone numbers may only be withheld if the cellular service is not paid for by a governmental body. To the extent the information we have marked and indicated does not pertain to a licensed peace officer, it may not be withheld under section 552.117(a)(2).

To the extent the information we have marked and indicated does not pertain to a licensed peace officer, we note it may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. As we noted, section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* ORD 506 at 5-7. Therefore, to the extent the information we have marked and indicated does not pertain to a licensed peace officer, and to the extent the employee at issue timely elected to keep such information confidential under section 552.024, the city must withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the cellular service is not paid for by a governmental body.<sup>12</sup> If the employee did not make a timely election under section 552.024, the city may not withhold this information under section 552.117(a)(1) of the Government Code.

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 a 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). Upon review, we find the city must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.<sup>13</sup> However, none of the remaining information is subject to section 552.130; therefore, the city may not withhold any of the remaining information that basis.

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<sup>12</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

<sup>13</sup>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).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). The city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure.<sup>14</sup>

Some of the remaining information is subject to sections 552.102, 552.1175, and 552.139 of the Government Code.<sup>15</sup> Section 552.102 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.” *Id.* § 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). Upon review, we find the city must withhold the birth date we have marked under section 552.102 of the Government Code.

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. *See Gov't Code* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure” and “employees of a district attorney [or] criminal district attorney[.]” *Id.* § 552.1175(a)(1), (5). We note, section 552.1175 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* ORD 506 at 5-7. Thus, to the extent the information we have marked relates to a peace officer or an employee of a district attorney or criminal district attorney who elects to restrict access to the information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code; however the marked cellular telephone numbers may only be withheld if they are not paid for by a governmental body.<sup>16</sup> Conversely, if the individuals whose information is at issue are not currently licensed peace officers or

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<sup>14</sup>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 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 opinion.

<sup>15</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>16</sup>Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, date of birth, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure who properly elects to keep this information confidential. *See Gov't Code* § 552.1175(f).

employees of a district attorney or criminal district attorney or do not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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 city must withhold the copies of the identification card, which we have marked, under section 552.139(b)(3) of the Government Code.

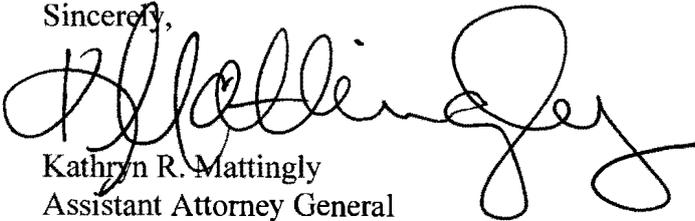
In summary, the TCLEOSE identification number is not subject to the Act and need not be released to the requestor. The city must withhold: (1) the I-9 form we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (2) the tax return information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (3) the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA; (4) the L-2 and L-3 declaration forms we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (5) the F-5 reports we have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code; (6) the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code; (7) the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law; (8) the mental health record we have marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code; (9) the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy; (10) the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code; (11) the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure; (12) the birth date we have marked under section 552.102 of the Government Code; and (13) the copies of the identification card we have marked under section 552.139(b)(3) of the Government Code. The city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. To the extent the information we have marked and indicated pertains to a licensed peace officer, the city must withhold this information under section 552.117(a)(2) of the Government Code; however, the marked cellular telephone numbers may only be withheld if the cellular service is not paid for by a governmental body. To the extent the information we have marked and indicated does not pertain to a licensed peace officer, and to the extent the employee at issue timely elected to keep such information confidential under section 552.024, the city must withhold this information under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the cellular service is not paid for by a governmental body. To the extent the information we have marked relates to a peace officer or an employee of a district attorney or criminal district attorney who elects to restrict access to the information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the

Government Code; however the marked cellular telephone numbers may only be withheld if they are not paid for by a governmental body. The city must release the remaining information to the requestor.

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](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,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written in a cursive style.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 518555

Enc. Submitted documents

c: Requestor  
(w/o enclosures)