



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 25, 2016

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OR2016-16637

Dear Ms. Mance:

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# 619753 (Ref. No. COHM16-014).

The Humble Police Department (the "department"), which you represent, received a request for the internal affairs complaint history and dispositions, and employment file of a named officer.<sup>1</sup> You state the department has released some responsive information. You state the department will redact certain information under section 552.136(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.<sup>2</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.130, and 552.137 of the Government Code. You also state release of this information may implicate the privacy interests of the named officer. Accordingly, you state, and provide documentation showing, you notified the named officer of the request for information. *See* Gov't Code § 552.304 (permitting interested third party

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<sup>1</sup>You inform us the requestor paid a deposit pursuant to section 552.263 of the Government Code on May 11, 2016. *See* Gov't Code § 552.263(e) (request considered received on date governmental body receives required deposit).

<sup>2</sup>Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). 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 id.* § 552.147(b).

to submit to attorney general reasons why requested information should or should not be released). As of this date, we have not received comments from the named officer. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). However, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (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); Open Records Decision No. 350 at 3-4 (1982). You state the information you have marked under section 552.108(a)(2) pertains to cases that concluded in results other than conviction or deferred adjudication. Based on your representations and our review, we conclude section 552.108(a)(2) is applicable to the information we have marked. However, the remaining information at issue consists of internal affairs investigations of department officers that are purely administrative in nature. As a result, we find the department has failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information at issue. Accordingly, the department may not withhold any of the remaining information at issue under section 552.108(a)(2) of the Government Code.

Further, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes the names of the investigating officers in offense reports, but does not include dates of birth or motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code.<sup>3</sup>

Section 552.108(b) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov't Code § 552.108(b)(1). This section 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

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<sup>3</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures for forthcoming execution). However, to claim this aspect of section 552.108 protection a governmental body must meet its burden of explaining how and why release of the information at issue would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

Some of the information you have marked under section 552.108(b)(1) pertains to the employment of off-duty police officers. We understand release of this information would reveal the officers’ locations on specific days at specific times, thereby endangering the lives or physical safety of law enforcement personnel. In addition, some of the information you have marked in the internal affairs investigations pertains to undercover operations. Upon review, we find the release of this information would interfere with law enforcement. *See, e.g.*, ORD 456 (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). Therefore, the department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we note section 552.108(b)(1) is not applicable to the identities of undercover officers who are also investigating officers in offense reports because that information is considered basic information pursuant to section 552.108(c). *See Gov’t Code § 552.108(c)*, ORD 127 at 3-4. Further, we conclude you have not established the release of the remaining information at issue would interfere with law enforcement. Therefore, the department may not withhold any of the remaining information at issue 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. Section 552.101 also encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement

records relating to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). Section 58.007(c) reads:

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). You raise section 58.007 for some of the remaining information. However, upon review, we find none of the information at issue involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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), .03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Thus, the information at issue is not confidential under section 58.007(c) and the department may not withhold it under section 552.101 of the Government Code on that ground.

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 (“NCIC”) 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). Part 20 of title 28 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). Section 411.083 of the Government Code makes CHRI the Texas Department of Public Safety (“DPS”) maintains confidential, except DPS may disseminate this information as provided in subchapter E-1 or subchapter F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI. However, a criminal justice agency may only release CHRI to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, CHRI obtained from DPS or any other criminal justice agency must

be withheld under section 552.101 of the Government Code in conjunction with subchapter F of chapter 411 of the Government Code. We note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. However, we also note section 411.083 does not apply to active warrant information, information relating to an individual’s current involvement in the criminal justice system, or driving record information. *Id.* §§ 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement with criminal justice system), .082(2)(B).

Upon review, we find the information we have marked under chapter 411 constitutes confidential CHRI. Therefore, the department 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>4</sup> However, we find you have failed to demonstrate any portion of the remaining information at issue constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the department may not withhold any of the remaining information at issue under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the Americans with Disabilities Act of 1990 (the “ADA”). 42 U.S.C. §§ 12101-12213. The ADA provides a covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination, provided that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. *See* 42 U.S.C. § 12112(d)(3)(B); *see also* 29 C.F.R. § 1630.14(b); Open Records Decision No. 641 (1996). Thus, the department must withhold the physical examination records we have marked under section 552.101 of the Government Code in conjunction with the ADA.<sup>5</sup>

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;

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<sup>4</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

<sup>5</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

(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. The information we have marked consists of polygraph information that is confidential under section 1703.306, and the requestor does not appear to have a right of access to the information under that section. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.<sup>6</sup>

Section 552.101 of the Government Code also encompasses information made confidential by section 560.003 of the Government Code, which states, "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). The remaining information contains fingerprints subject to section 560.003. There is no indication the requestor has a right of access to the 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 individual consents to disclosure). Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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

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<sup>6</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

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 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 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (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 at 1 (1990). Upon review, we find the information we have marked is confidential under the MPA. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have not demonstrated any of the remaining information is confidential under the MPA. Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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. 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 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. We note records relating to routine traffic violations are not considered criminal

history information. *Cf.* Gov't Code § 411.082(2)(B) (criminal history record information does not include driving record 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 also found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See, e.g.,* Open Records Decision Nos. 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 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). In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>7</sup> *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. However, we note the public has a legitimate interest in knowing the general details of a crime. *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (5th Cir. 1994))); *Houston Chronicle*, 531 S.W.2d at 186-87 (public has legitimate interest in details of crime and police efforts to combat crime in community).

Upon review, we find the information we have marked and indicated meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note some of the information we have indicated is contained in video recordings. You state the department lacks the technical capability to redact information from the submitted video recordings. Based on your representation, the department must withhold the information we have marked and indicated, including the entire video recordings we have indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. In addition, the department must withhold all public citizens' dates of birth under section 552.101 of the Government Code. However, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the department may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

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<sup>7</sup>Section 552.102(a) 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).

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). 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, which is 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 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 the privacy standard under section 552.102(a) 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 also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Having reviewed the information at issue, we have marked information that the department must withhold under section 552.102(a) of the Government Code. However, none of the remaining information is subject to section 552.102(a) of the Government Code. Accordingly, the department may not withhold any of the remaining information on that basis.

You state you will redact the information you have marked under section 552.117(a)(2) of the Government Code pursuant to Open Records Decision No. 670 (2001).<sup>8</sup> However, we note the remaining information contains additional information subject to section 552.117(a)(2) of the Government Code, which 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. Section 552.117 also encompasses a personal cellular telephone number, unless the cellular 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). We are unable to determine whether the individuals whose information we have marked are currently licensed peace officers as defined by article 2.12. Further, one of the submitted video recordings contains information that is subject to section 552.117. As noted above, you state the department lacks the technical capability to redact information from the submitted video recordings. Accordingly, to the extent the individuals are currently licensed peace officers, the department must withhold the information you have marked and we have marked and indicated, including the entire video recording we have indicated, under section 552.117(a)(2) of the Government

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<sup>8</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.

Code; however, the department may not withhold the cellular telephone number we marked if the cellular telephone service is paid for by a governmental body. Conversely, if the individuals are not currently licensed peace officers, then the department may not withhold this information under section 552.117(a)(2) of the Government Code.

If the individuals are not currently licensed peace officers, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which 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 that 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 department may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information you have marked and we have marked and indicated, including the entire video recording we have indicated, under section 552.117(a)(1) of the Government Code; however, the department may not withhold the cellular telephone number we marked if the cellular telephone service is paid for by a governmental body. Conversely, if the individuals did not timely request confidentiality under section 552.024, then the department may not withhold this information under section 552.117(a)(1).

You state you will redact the information you have marked under section 552.1175(f) of the Government Code.<sup>9</sup> However, we note the remaining information contains additional information subject to section 552.1175 of the Government Code, which 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. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Thus, to the extent the individuals at issue are licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b), then the department must withhold the information you have marked and the information we have marked under section 552.1175 of the Government Code. However, if the individuals whose information is at issue are not licensed peace officers or do not elect to restrict access to the

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<sup>9</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, social security number, date of birth, and family member information of certain individuals who properly elect to keep this information confidential. Gov't Code § 552.1175(b), (f). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *Id.* § 552.1175(g), (h).

information in accordance with section 552.1175(b), then the department may not withhold this information under section 552.1175.

You state you will redact the information you have marked under section 552.130 of the Government Code.<sup>10</sup> However, we note the remaining information contains additional information subject to section 552.130 of the Government Code, which 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 id.* § 552.130(a). Some of the submitted video recordings contain motor vehicle record information that is subject to section 552.130. As noted above, you state the department lacks the technical capability to redact information from the submitted video recordings. Based on this representation, we agree the department must withhold the information you have marked and the information we have marked and indicated, including the entire video recordings we have indicated, under section 552.130 of the Government Code.

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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). You seek to withhold the private e-mail addresses of government officials who used their private e-mail addresses to conduct official government business. However, in *Austin Bulldog v. Leffingwell*, No. 03-13-00604-CV, 2016 WL 1407818 (Tex. App.—Austin April 8, 2016, no pet.), the court concluded section 552.137 does not except from disclosure the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *See Austin Bulldog*, 2016 WL 1407818, at \*7. Therefore, upon review, we find you have failed to demonstrate the information you have marked is excepted under section 552.137. Accordingly, the department may not withhold any of the information at issue on this ground.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in

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<sup>10</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in section 552.130(a) of the Government Code without the necessity of seeking a decision from the office of 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). Thus, the statutory amendment to section 552.130 of the Government Code supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to section 552.130(a) only in accordance with section 552.130(c), not Open Records Decision No. 684.

accordance with a court order.<sup>11</sup> *See* Gov't Code § 552.140(a)-(b). The department came into possession of the submitted military discharge records after September 1, 2003. Accordingly, we conclude the department must withhold the military discharge record we have marked under section 552.140 of the Government Code.

Section 552.152 of the Government Code provides:

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

*Id.* § 552.152. You also seek to withhold the identifying information of an undercover officer in an offense report. We understand the release of the undercover officer's identity would subject the officer to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identity of the undercover officer. Accordingly, the department must withhold the identifying information of the undercover officer, which we have marked, under section 552.152 of the Government Code.

In summary, with the exception of basic information, the department may withhold the information we have marked under section 552.108(a)(2) of the Government Code. The department may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The department must withhold the physical examination records we have marked under section 552.101 of the Government Code in conjunction with the ADA. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The department must withhold the information we have marked and indicated, including the entire video recordings we have indicated, and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.102(a) of the Government Code. To the extent the individuals are currently licensed peace officers, the department must withhold the information you have marked and we have marked and indicated, including the entire video recording we have indicated, under section 552.117(a)(2) of the Government Code. If the individuals are

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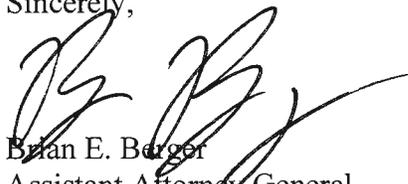
<sup>11</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

not currently licensed peace officers, then to the extent the individuals timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information you have marked and we have marked and indicated, including the entire video recording we have indicated, under section 552.117(a)(1) of the Government Code. The department may not withhold the cellular telephone number we marked under section 552.117 if the cellular telephone service is paid for by a governmental body. To the extent the individuals at issue are licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b), then the department must withhold the information you have marked and the information we have marked under section 552.1175 of the Government Code. The department must withhold the information you have marked and the information we have marked and indicated, including the entire video recordings we have indicated, under section 552.130 of the Government Code. The department must withhold the military discharge record we have marked under section 552.140 of the Government Code. The department must withhold the information we have marked under section 552.152 of the Government Code. The remaining information must be released.

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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/eb

Ref: ID# 619753

Enc. Submitted documents

c: Requestor  
(w/o enclosures)