



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 7, 2017

Ms. Andrea D. Russell
Counsel for the City of Weatherford
Taylor Olson Adkins Sralla Elam L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2017-02769

Dear Ms. Russell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 644865.

The Weatherford Police Department (the "department"), which you represent, received a request for all materials relating to a specified internal investigation and all complaints involving a named individual during a specified time period. You state you will release some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); *see* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to

¹Although you also raise sections 552.103, 552.107, 552.108(a)(2), and 552.111 of the Government Code and section 552.101 of the Government Code in conjunction with common-law privacy for the submitted information, you provide no arguments explaining how these exceptions apply to the submitted information. Accordingly, we assume you have withdrawn these claims. *See* Gov't Code §§ 552.301, .302.

anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (information regarding location of off-duty police officers), 252 (1980) (section 552.108 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 a portion of the submitted information consists of the department’s operational procedure for the use of Tasers. You state the portions of the operational procedure you indicated would place criminals at an advantage in confrontations with officers by allowing them to anticipate the types of force that could be used, the situations and circumstances where an officer is authorized to use a Taser, and tactical decisions and movements of an officer. You argue release of this information would place police officers at a greater risk of physical harm. Based on these representations and our review, we determine release of the information at issue would interfere with law enforcement. Therefore, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate the release of the remaining information you indicated would interfere with law enforcement or prosecution. Accordingly, the department may not withhold the remaining information it indicated under section 552.108(b)(1) of the Government Code.

Section 552.108(a) of the Government Code excepts from disclosure “[I]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state portions of the remaining information pertain to an open and active criminal investigation. Based upon this representation, we conclude section 552.108(a)(1) is applicable, and the release of the information you indicated would interfere with the detection, investigation, or prosecution

of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, 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). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, the department may withhold the information it has indicated under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 411.083 of the Government Code, which pertains to criminal history record information (“CHRI”). 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.” *Id.* § 411.082(2). Title 28, part 20 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); *see generally* Gov’t Code ch. 411 subch. F. 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, or subchapter E-1, 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. Upon review, we find the information the department indicated consists of CHRI the department must withhold under section 552.101 in conjunction with section 411.083 of the Government Code and federal law.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.² *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.

Upon review, we find the information you indicated is subject to section 552.101 of the Government Code in conjunction with common-law privacy. You state the department does not have the technological capability to redact the date of birth you indicated in one of the submitted audio recordings. However, because the department had the ability to copy the audio recording for our review, we believe the department has the capability to produce a copy of only the non-confidential portions of the audio recording. Accordingly, the department must withhold the public citizen's date of birth it indicated within the audio recording at issue under section 552.101 of the Government Code in conjunction with common-law privacy. However, we also find one of the submitted video recordings contains a date of birth of a public citizen that is excepted from disclosure under section 552.101 in conjunction with common-law privacy. In this instance, the department states it does not possess the technological capability to redact information from video files. Therefore, we agree the department must withhold the video recording at issue in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. *See* ORD 364.

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 or section 552.1175 of the Government Code.³ 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. Accordingly, the department must withhold the information it indicated and the additional information we indicated under section 552.117(a)(2) of the Government Code. You assert one of the submitted audio recordings is excepted from release in its entirety because it contains information subject to section 552.117(a)(2) of the Government Code and the department lacks the technical capacity to redact such information from the

²Section 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).

³Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

recording. However, because the department has the ability to copy the audio recording in order to submit it for our review, we believe the department has the capacity to produce copies of only the non-confidential portions of the audio recording. Therefore, the department may not withhold the audio recording in its entirety on that ground.

Section 552.130 of the Government Code exempts from disclosure 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. Upon review, we find one of the submitted video recordings contains motor vehicle record information that is excepted from disclosure under section 552.130. In this instance, you state the department does not possess the technological capability to redact information from video files. Thus, we agree the department must withhold the video recording we indicated in its entirety under section 552.130 of the Government Code. *See* ORD 364.

In summary, the department may withhold the information we marked under section 552.108(b)(1) of the Government Code. With the exception of basic information, the department may withhold the information it indicated under section 552.108(a)(1) of the Government Code. The department must withhold the CHRI it indicated under section 552.101 in conjunction with section 411.083 of the Government Code and federal law. The department must withhold the public citizen's date of birth it indicated within the submitted documents and audio recording under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the video recording we indicated in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the information it indicated and the additional information we indicated under section 552.117(a)(2) of the Government Code. The department must withhold the video recording we indicated in its entirety under section 552.130 of the Government Code. The department must release the remaining information.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/>

⁴We note the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the department receives another request for this information from a different requestor, the department must again seek a ruling from this office.

[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 that reads "Kael A Henze". The signature is written in a cursive style with a large initial "K" and a long horizontal stroke at the end.

Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 644865

Enc. Submitted documents

c: Requestor
(w/o enclosures)