



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 8, 2017

Mr. William Seigman  
Director  
McLennan County Community Supervision and Corrections Department  
504 North 6<sup>th</sup> Street  
Waco, Texas 76701

OR2017-09855

Dear Mr. Seigman:

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# 656465.

The McLennan County Community Supervision and Corrections Department (the "department") received a request for certain information pertaining to a named individual. You inform us the department does not have some of the requested information.<sup>1</sup> You state the department has released some information to the requestor. You assert some of the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<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 that those records contain substantially different types of information than that submitted to this office.

The Act is applicable to information that is “written, produced, collected, assembled, or maintained . . . in connection with the transaction of official business . . . by a governmental body[.]” Gov’t Code § 552.002(a)(1). However, the Act’s definition of “governmental body” “does not include the judiciary.” *Id.* § 552.003(1)(B). In Open Records Decision No. 646 (1996), this office determined a community supervision and corrections department is a governmental body for purposes of the Act, and its administrative records, such as personnel files and other records reflecting the day-to-day management of the department, are subject to the Act. ORD 646 at 5; *see also Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ) (in determining whether governmental entity falls within judiciary exception, this office looks to whether governmental entity maintains relevant records as agent of judiciary with regard to judicial, as opposed to administrative, functions). In contrast, specific records held by a community supervision and corrections department concerning individuals who are on probation and subject to the direct supervision of a court are not subject to the Act, as such records are held on behalf of the judiciary. ORD 646 at 5.

You have informed this office the information at issue consists of records concerning probationers maintained by the department on behalf of the judiciary. Based on your representation and our review, we find the information we have indicated within Exhibit D is held by the department on behalf of the judiciary and, therefore, is not subject to disclosure under the Act. Our ruling does not address the public availability of the information we have indicated and the department need not release it in response to this request.<sup>3</sup> However, we find Exhibit C and the remaining information within Exhibit D consist of the department’s administrative records. Thus, this information is subject to the Act and must be released unless it is otherwise excepted from required disclosure. Gov’t Code § 552.021. Accordingly, we will address your arguments against disclosure of this information.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” *Id.* § 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, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. In this instance, the

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<sup>3</sup>As we are able to make this determination, we need not consider your remaining arguments against disclosure of this information.

information at issue pertains to an internal affairs investigation. Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982).

However, you state, and provide documentation showing, the McLennan County Criminal District Attorney's Office (the "district attorney's office") objects to release of Exhibit C because release would interfere with a pending criminal prosecution. Based upon this representation, we conclude the release of Exhibit C 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, 186-87 (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, 560-61 (Tex. 1976). Thus, section 552.108(a)(1) is applicable, and the department may withhold Exhibit C under section 552.108(a)(1) of the Government Code.<sup>4</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. Section 552.101 encompasses information protected by other statutes, such as laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "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). 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 §§ 411.081-.1409. 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 E-1 or F of the Government Code. *See id.* § 411.083(a). 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 generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Accordingly, the department must withhold the CHRI we have marked under

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 552.101 of the Government Code in conjunction section 411.083 of the Government Code.<sup>5</sup> However, the remaining information does not constitute confidential CHRI; thus, the department may not withhold 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found common-law privacy protects the identifying information of juvenile victims of abuse or neglect. *Cf.* Fam. Code § 261.201. In Open Records Decision No. 594 (1991) this office concluded public employees may have a privacy interest in their drug test results. *See* ORD 594 (suggesting identification of individual as having tested positive for use of illegal drug may raise privacy issues), 455 at 5 (1987) (citing *Shoemaker v. Handel*, 619 F. Supp. 1089 (D.N.J. 1985), *aff'd*, 795 F.2d. 1136 (3rd Cir. 1986)). We note the remaining information contains information regarding the administration of drug and alcohol tests to a department employee. As this office has explained on many occasions, information involving public officials and employees and public employment is generally not private because the public has a legitimate interest in such information. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Upon review, we conclude the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. Although some of the remaining information at issue may be highly intimate or embarrassing, the public has a legitimate interest in the information. Further, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Thus, the department may not withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

personal privacy[.]” Gov’t Code § 552.102(a). Upon review, we find none of the remaining information is excepted under section 552.102(a) of the Government Code. Accordingly, the department may not withhold the remaining information on that basis.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential.<sup>6</sup> *Id.* § 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. *Id.* Section 552.117(a)(2) protects a peace officer’s personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. Open Records Decision No. 670 at 6 (2001); *cf.* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to numbers for cellular mobile phones installed in county officials’ and employees’ private vehicles and intended for official business). Accordingly, if the individuals whose information we have marked are still licensed peace officers, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code, including the cellular telephone numbers if the cellular telephone service is not paid for by a governmental body.

If the individuals at issue are no longer licensed peace officers, then the marked information may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) applies to records a governmental body holds in an employment capacity and 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). As noted above, section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals at issue are no longer licensed peace officers, and if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code, including

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<sup>6</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.

the cellular telephone numbers if the cellular telephone service is not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130*. Accordingly, the department must withhold the motor vehicle record information we have marked 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). *Id.* § 552.137(a)-(c). We are unable to determine whether the personal e-mail addresses within the remaining information, which are located within e-mails communicating official business of the department, belong to department officials or employees. Thus, we rule conditionally. To the extent the submitted e-mail addresses are the personal e-mail addresses of department officials or employees, this information is not subject to section 552.137 and the department may not withhold them on that basis. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of "members of the public" for purposes of Gov't Code § 552.137(a)). To the extent the personal e-mail addresses within the remaining information are not the personal e-mail addresses of department officials or employees, this information is subject to section 552.137 and the department must withhold them under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release or subsection (c) applies.

In summary, the information we have indicated under section 552.003 of the Government Code is not subject to the Act and need not be released. The department may withhold Exhibit C under section 552.108(a)(1) of the Government Code. The department must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction section 411.083 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information we have marked are still licensed peace officers, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code, including the cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. If the individuals at issue are no longer licensed peace officers, and if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code, including the cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. To the extent the personal e-mail addresses

within the remaining information are not the personal e-mail addresses of department officials or employees, the department must withhold them under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release or subsection (c) applies. The department must release the remaining information.

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 656465

Enc. Submitted documents

c: Requestor  
(w/o enclosures)