



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 22, 2017

Mr. L. Brian Narvaez  
Counsel for the Town of Prosper  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2017-11045

Dear Mr. Narvaez:

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# 658560.

The Town of Prosper (the "town"), which you represent, received a request for personnel and internal affairs files related to a named officer of the town's police department (the "department"). The town states it is withholding social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> The town further states it is withholding certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> The town argues some of the submitted information does not consist of public information subject to the Act. The town also claims some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.1175, 552.136, and 552.137 of the Government Code. We have considered the exceptions the town claims and reviewed the submitted information.

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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. *See* Gov't Code § 552.147(b).

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

Initially, the town notes the submitted information contains a peace officer's Texas Commission on Law Enforcement ("commission") identification number.<sup>3</sup> Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body; for a governmental body and the governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body. Gov't Code. § 552.002(a). 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. ORD 581 at 5. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commission's electronic database, and may be used as an access device number on the commission's website. Accordingly, we find the officer's commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification number is not subject to the Act and the town is not required to release it to the requestor.

Next, we note the submitted information includes a police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661 provides, in relevant part, the following:

(a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recording at issue was not

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<sup>3</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. See Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

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). 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The information submitted as Exhibit B consists of personnel file information of the named department officer. Section 552.108 is generally not applicable to purely administrative records that do 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.) (section 552.108 generally not applicable to law enforcement agency’s personnel records); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. 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). The town argues the information at issue “relates to an open and pending investigation.” However, the town does not inform us the submitted personnel file relates to a specific ongoing criminal investigation or prosecution by the town, nor has the town explained why release of the information would interfere with the detection, investigation, or prosecution of crime. Thus, the town may not withhold any portion of the information at issue under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(2) of the Government Code excepts from disclosure an internal record or notation of a law enforcement agency or prosecutor if the information relates to an investigation that did not result in conviction or deferred adjudication. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). As noted above, section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth*, 86 S.W.3d 320; *Ellen*, 840 S.W.2d 519; *see also* ORD 350 at 3-4. The town explains the information we marked as Exhibit C consists of “records used or developed in an internal investigation that did not result in a conviction or deferred adjudication.” We note the internal investigations at issue were purely administrative in nature. The town does not provide any arguments explaining the internal investigations resulted in a criminal investigation or prosecution. Further, the town does not explain any portion of the information at issue relates to a closed criminal investigation or prosecution that did not result in conviction or deferred adjudication. Therefore, the town has failed to demonstrate the applicability of section 552.108(b)(2) to the information at

issue, and the town may not withhold Exhibit C on that basis. However, we will consider additional exceptions to disclosure of this information, as well as the remaining information.

Section 552.101 of the Government Code excepts from public 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 chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that 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(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). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find a portion of the submitted information, which we have marked, consists of CHRI that is confidential under section 411.083. Thus, the town must withhold the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code. However, we find the town has not demonstrated any portion of the remaining information consists of CHRI for purposes of chapter 411 of the Government Code, and the town 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 information made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. 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.

Occ. Code § 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). 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 (1990).

Upon review, we find some of the remaining information, which we have marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. Accordingly, the town must withhold the marked information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see 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. *See id.* §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find

some of the remaining information, which we have marked, consists of a mental health record that is subject to chapter 611 of the Health and Safety Code. Accordingly, the town must withhold the marked mental health record under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.

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). 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). Accordingly, the town must withhold the employee’s date of birth it marked, and the additional information we marked, under section 552.102(a) of the Government Code.

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 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* Open Records Decision Nos. 600 (1992) (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, 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). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the town must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>4</sup> However, we find the town has not demonstrated any of the remaining information it marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the town may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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<sup>4</sup>As our ruling is dispositive for this information, we need not address the remaining argument against its disclosure.

Section 552.117(a)(2) of the Government Code 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. Upon review, we find most of the information the town marked, and the additional information we marked and noted, is subject to section 552.117(a)(2) of the Government Code. However, we find the town has not demonstrated some of information it marked consists of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former employee of the town. This information, which we have marked for release, may not be withheld under section 552.117(a)(1). Therefore, with the exception of the information we marked for release, the town must withhold the information it marked and the additional information we marked and noted under section 552.117(a)(2) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). The town marked information that relates to individuals who are licensed as peace officers of other law enforcement agencies. Accordingly, if the individuals to whom the information pertains elect to restrict access to the information in accordance with section 552.1175(b), the town must withhold the marked information under section 552.1175 of the Government Code. Conversely, if the individuals whose information is at issue do not elect to restrict access to their information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175.

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 id.* § 552.130. The town states it will withhold the motor vehicle record information it marked pursuant to section 552.130(c) of the Government Code.<sup>5</sup> The town must also withhold the additional motor vehicle record information we have marked, as well as all discernible motor vehicle record information within the submitted video and audio recordings, 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). We note section 552.137 is not applicable to an e-mail address that a governmental entity maintains for one of its officials or employees. The town marked e-mail addresses it seeks to withhold under section 552.137. Upon review, we find some of the e-mail addresses the town marked are maintained by governmental entities for their employees. These e-mail addresses, which we have marked for release, may not be withheld under section 552.137 of the Government Code. The remaining e-mail addresses at issue are not excluded by subsection (c). Therefore, with the exception of the e-mail addresses we marked for release, the town must withhold the personal e-mail addresses it marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the submitted body worn camera recording was not properly requested pursuant to chapter 1701 of the Occupations Code and it need not be released. The town must withhold (1) the information we marked under section 552.101 in conjunction with section 411.083 of the Government Code; (2) the information we marked under section 552.101 of the Government Code in conjunction with the MPA; (3) the mental health record we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code; (4) the employee's date of birth it marked, and the additional information we marked, under section 552.102(a) of the Government Code; (5) the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (6) the information the town marked and the additional information we marked and noted under section 552.117(a)(2) of the Government Code, with the exception of the information we marked for release; (7) the information the town marked under section 552.1175 of the Government Code, if the individuals to whom the information pertains elect to restrict access to the information in accordance with section 552.1175(b) of the Government Code; (8) the additional motor vehicle record information we marked, as well as all discernible motor vehicle record information within

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<sup>5</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).

the submitted video and audio recordings, under section 552.130 of the Government Code; and (9) the personal e-mail addresses it marked under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure, with the exception of the e-mail addresses we marked for release. The town 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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 658560

Enc. Submitted documents

c: Requestor  
(w/o enclosures)