



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 12, 2017

Ms. Michelle Buendia  
Assistant City Attorney  
City of Dallas  
1400 South Lamar Street, 6<sup>th</sup> Floor, 6W  
Dallas, Texas 75215

OR2017-23305

Dear Ms. Buendia:

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# 679477 (ORR# 2017-15802).

The City of Dallas (the "city") received a request for fourteen categories of information related to a named city police officer and a specified automotive accident. You state you have released some information to the requestor, including the police officer's crash report pursuant to section 550.065 of the Transportation Code. *See* Transp. Code § 550.065(c) (providing for release of accident report to person or entity listed under this subsection). You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.117, 552.1175, 552.130, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the submitted information includes peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as the following:

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) 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. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the submitted TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the submitted TCOLE numbers are not subject to the Act and need not be released to the requestor.<sup>2</sup>

Next, we note some of the remaining information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

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<sup>2</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (3), (17). The remaining information includes completed reports, investigations, and evaluations that are subject to subsection 552.022(a)(1). The city must release the information at issue pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or made confidential under the Act or other law. The remaining information also includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to subsection 552.022(a)(3) and court-filed documents that are subject to subsection 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (17). You seek to withhold the information subject to section 552.022 of the Government Code under section 552.103. However, section 552.103 is a discretionary exception and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold the information subject to section 552.022 of the Government Code, which we have marked, under section 552.103 of the Government Code. However, sections 552.101, 552.102, 552.117, 552.1175, 552.130, and 552.136 of the Government Code make information confidential under the Act. Therefore, we will address the applicability of these exceptions to the information at issue.<sup>3</sup> We will also address your argument under section 552.103 of the Government Code for the information not subject to section 552.022 of the Government Code.

Section 552.103 of the Government Code provides as follows:

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<sup>3</sup>We note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, a lawsuit styled *Albarran v. City of Dallas*, Cause No. CC-17-03320-E, was pending in the Dallas County Court at Law Number 5, when you received the instant request for information. You state the information not subject to section 552.022 is related to the pending lawsuit. Based on your representations, the submitted documentation, and our review of the information at issue, we find litigation was pending when the city received this request for information, and the information at issue is related to the pending litigation for the purposes of section 552.103. Therefore, the city may withhold the information not subject to section 552.022 of the Government Code under section 552.103(a) of the Government Code.<sup>4</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further,

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

the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses 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 E-1 or subchapter F of the Government Code. *See Gov’t Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). 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 E-1 or subchapter F of the Government Code. Upon review, we find the information you have marked, and the additional information we have marked, consists of CHRI that is confidential under section 411.083. Accordingly, the city must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also encompasses chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.318 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 20,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See Open Records Decision No. 649 (1996).* We understand the city is part of an emergency communication district that is subject to section 772.318 of the Health and Safety Code. We conclude the city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of originating telephone numbers furnished by a 9-1-1 service supplier. If the marked information does not consist of originating telephone

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

numbers provided by a 9-1-1 service supplier, then it may not be withheld under section 552.101 in conjunction with section 772.318.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in relevant part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(a)-(b), (g). Except for the information specified in section 773.091(g), emergency medical services (“EMS”) records are deemed confidential under section 773.091. *See id.* § 773.091. Upon review, we find section 773.091 is applicable to some of the remaining information. Therefore, with the exception of the information subject to section 773.091(g), the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

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). 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 city must withhold the information you have marked under section 552.102(a) of the Government Code.<sup>6</sup>

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

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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 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). The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. See *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.). We note the requestor has a right of access to her clients' dates of birth pursuant to section 552.023 of the Government Code; thus, this information may not be withheld from the requestor under section 552.101 in conjunction with common-law privacy. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor's clients' dates of birth, the city must withhold the remaining public citizens' dates of birth, the remaining information you have marked, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. You have marked information under section 552.117 that consists of the personal information of peace officers who are or were employed by the city and the information is held in an employment context. In this instance, however, it is unclear whether the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the individuals whose information is at issue are currently licensed peace officers as

defined by article 2.12, the city must withhold the information you have marked under section 552.117(a)(2) of the Government Code. Conversely, to the extent the individuals whose information is at issue are no longer licensed peace officers as defined by article 2.12, then the city may not withhold the marked information under section 552.117(a)(2).

If the information you have marked under section 552.117 pertains to individuals who are no longer licensed peace officers, then the marked information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the individuals at issue are no longer licensed peace officers as defined by article 2.12 and to the extent the individuals timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue are no longer licensed peace officers as defined by article 2.12 and did not timely request confidentiality under section 552.024, the city may not withhold the marked information under section 552.117(a)(1).

To the extent this information is not confidential under section 552.117 of the Government Code, you claim the information you have marked is subject to section 552.1175 of the Government Code. Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Upon review, we find the city holds the information at issue in an employment capacity. Therefore, section 552.1175 is not applicable to this information and the city may not withhold it on that ground.

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. We note, because section 552.130 is designed to protect the privacy of individuals, the requestor has a right of access to her clients' motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from that requestor under section 552.130. *See* Gov't Code § 552.023(a); ORD 481 at 4. Therefore, with the exception of the requestor's clients' motor vehicle record information, the city must withhold from the information subject to

section 552.022 of the Government Code the motor vehicle record information you have marked and the additional motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). However, the purpose of section 552.136 is to protect the privacy interests of individuals. Thus, the requestor has a right of access to her client’s insurance policy number pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.136. *See id.* § 552.023(a); ORD 481 at 4. You state the employee identification numbers you have marked are used in conjunction with one additional digit to access city credit union bank accounts. We therefore conclude the city must withhold the employee identification numbers you have marked under section 552.136 of the Government Code.

In summary, the submitted TCOLE identification numbers are not subject to the Act and need not be released to the requestor. The city may withhold the information not subject to section 552.022 of the Government Code under section 552.103(a) of the Government Code. The city must withhold the information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code if they consist of originating telephone numbers furnished by a 9-1-1 service supplier. With the exception of the information subject to section 773.091(g), the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The city must withhold the information you have marked under section 552.102(a) of the Government Code. With the exception of the requestor’s clients’ dates of birth, the city must withhold the remaining public citizens’ dates of birth, the remaining information you have marked, and the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals whose information is at issue are currently licensed peace officers as defined by article 2.12, the city must withhold the information you have marked under section 552.117(a)(2) of the Government Code. To the extent the individuals at issue are no longer licensed peace officers as defined by article 2.12 and to the extent the individuals timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the marked information under section 552.117(a)(1) of the Government Code. With the exception of the requestor’s clients’ motor vehicle record information, the city must withhold from the information subject to section 552.022 of the Government Code the motor vehicle record information you have marked and the additional motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.

The city must withhold the employee identification numbers you have marked under section 552.136 of the Government Code. The city must release the remaining information.<sup>7</sup>

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 679477

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>7</sup>We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, the city must again seek a decision from this office if it receives another request for the same information from another requestor.