



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2019-15678

Dear Mr. Kopp:

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# 769854 (Reference Nos. W25710 and W257163).

The City of San Antonio (the "city") received two requests from the same requestor for e-mails sent or received by two named individuals during defined periods of time. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be

¹We 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.

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. This office has found a compilation of an individual's criminal history 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 that 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.

The city claims the present request, in part, requires the city to compile individuals' criminal histories and implicates individuals' rights to privacy. However, upon review, we find the submitted information does not consist of a criminal history compilation, and the city may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy on that basis.

Section 552.101 of the Government Code also encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also* Fam. Code § 51.03(a) (defining "delinquent conduct" for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., S.B. 1304, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining "child" for

purposes of title 3 of Family Code). We find some of the information at issue involves juvenile offenders, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

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[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note 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 v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (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). You state the information you have marked relates to pending criminal investigations. Based upon your representation and our review, we find release of some of the information at issue 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). Thus, section 552.108(a)(1) is applicable to the information we have marked. Accordingly, the city may withhold the information we have marked under section 552.108(a)(1) of the Government Code.² However, we find you have failed to demonstrate the remaining information at issue is related to a pending criminal investigation or release of this information would interfere with the detection, investigation, or prosecution of a crime. Accordingly, the city may not withhold the remaining information at issue under section 552.108(a)(1) of the Government Code.

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). Section 552.108(b)(1) 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 undermine police efforts to effectuate the

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. See *Open Records Decision No. 562* at 10 (1990) (construing statutory predecessor). This office has concluded 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* (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code 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 argue the information at issue is subject to section 552.108(b)(1) of the Government Code. You state the release of the information at issue would “assist criminals and terrorists in knowing what actions provoke what types of responses, and the types of responses which can be expected [and] thereby pose a threat to the safety of officers.” Upon review, we find you have demonstrated release of some of the information at issue would interfere with law enforcement. Therefore, the city may withhold the information we have marked under section 552.108(b)(1) of the Government Code.³ However, we find you have not demonstrated release of any of the remaining responsive information would interfere with law enforcement or crime prevention. Consequently, the city may not withhold the remaining responsive information under section 552.108(b)(1) of the Government Code.

You also claim some of the remaining information is subject to section 552.108(a)(2) and (b)(2) of the Government Code. Section 552.108 provides, in relevant part, the following:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An 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 is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), (b)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Upon review, we find you have not demonstrated the information at issue pertains a specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of either section 552.108(a)(2) or section 552.108(b)(2). Therefore, the city may not withhold any of the remaining information under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code.

Section 552.101 of the Government Code also encompasses part 23 of title 28 of the Code of Federal Regulations, which was established to regulate intelligence databases pertaining to certain criminal activities that involve a large number of participants over a broad geographical area. *See* 28 C.F.R. § 23.2 (background of part 23). The policy standards of part 23 are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711 *et seq.* *Id.* § 23.3(a). For purposes of part 23, a criminal intelligence system “means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information,” and an intelligence project “means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies[.]” *Id.* § 23.3(b)(1), (5). The release of information within these criminal intelligence databases is governed by section 23.20 of part 23, which provides, in relevant part:

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

Id. § 23.20(e)-(f). For purposes of section 23.20, “criminal intelligence information” means “data which has been evaluated to determine that it: (i) [i]s relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and (ii) [m]eets criminal intelligence system submission criteria[.]” *Id.* § 23.3(b)(3). You state some of the information at issue is collected and maintained by the Southwest Texas Fusion Center (the “center”). You explain the center is a criminal intelligence system operated pursuant to part 23 of title 28 of the Code of Federal Regulations to “gather, document, process, analyze, and share information about behavior-based suspicious activities that potentially have a nexus to domestic and international terrorism.” You state the information at issue consists of criminal intelligence information that was developed and disseminated by the center. Based on your representations and our review, we conclude some of the remaining information, which we marked, is confidential under section 23.20 and may be released only in accordance with that section. The requestor is not a law enforcement authority and does not have a right to know the information at issue for purposes of section 23.20(e). *See id.* § 23.20(e), (f)(1). In addition, we have no indication disclosure of the information at issue to the requestor is necessary to avoid imminent danger to life or property. *Id.* § 23.20(f)(2). Therefore, we conclude the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations.⁴ However, we find you have not demonstrated any of the remaining information at issue constitutes “criminal intelligence information” for purposes of part 23 of title 28. *Id.* § 23.23(b)(3). Therefore, none of the remaining information is subject to section 23.20, and the city may not withhold it under section 552.101 of the Government Code on that basis.

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

Section 552.101 of the Government Code also encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.176 of the Homeland Security Act provides in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider[.]

Gov't Code § 418.176(a)(1), (2). Section 418.177 provides that information is confidential if it:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information at issue includes "an assessment maintained by the [city's police] department of the risk and vulnerability of persons, including law enforcement officers, and property to an act of terrorism or criminal activity. Further, you argue release of the

information at issue “could assist terrorists and criminals in conducting their own risk analysis, to determine how best to commit a criminal act or act of terrorism, by providing information as to how to get law enforcement officers and supervisors to respond to specific areas of the city.” Upon review, we find some of the information at issue, which we have marked, relates to staffing requirements of the city’s emergency response provider or to a tactical plan of the city’s emergency response provider that was collected, assembled, or maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Thus, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. However, we find you have failed to demonstrate the remaining information at issue is confidential under section 418.176 or section 418.177 of the Government Code. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 or section 418.177 of the Government Code.

Section 552.101 of the Government Code also encompasses information made confidential by statute, such as 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; Open Records Decision No. 598 (1991). The records at issue contain information directly obtained from medical records. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with the MPA.⁵

⁵As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.101 of the Government Code also encompasses information protected by section 143.089 of the Local Government Code. We understand the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of Local Gov't Code chapter 143). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or are in the possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines there is insufficient evidence to sustain the charge of misconduct or the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's

designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See City of San Antonio*, 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to "information reasonably related to a police officer's or fire fighter's employment relationship"); Attorney General Opinion JC-0257 at 6-7 (addressing functions of Local Gov't Code § 143.089(a) and (g) files). We note the fact that the information at issue references information that is contained in the officer's confidential section 143.089(g) file does not make the information confidential. *See Open Records Decision Nos. 658 at 4 (1998)* (stating statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from the statutory structure), 478 at 2 (1987) (stating as a general rule, statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public).

You state some of the remaining information is contained within the city police department's internal files maintained pursuant to section 143.089(g) of the Local Government Code. Based on your representation and our review, we find the information we have marked is confidential under section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.⁶

As stated above, section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which is subject to the two-part test discussed above. *Indus. Found.*, 540 S.W.2d at 685. 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 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.). Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate

⁶As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 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.⁷ *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 the city must withhold the information we have marked under section 552.117(a)(2) 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 id.* § 552.1175. Section 552.1175 applies, in part, to “peace officers as defined by Article 2.12, Code of Criminal Procedure” and “criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure[.]” *Id.* § 552.1175(a)(1), (a)(7). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We note some of the remaining information pertains to individuals who may be subject to section 552.1175(a)(1) or section 552.1175(a)(7). Accordingly, to the extent the individuals whose information is at issue are encompassed by section 552.1175(a)(1) or section 552.1175(a)(7) and they elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the cellular telephone numbers may only be withheld if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individuals whose information is at issue are not subject to section 552.1175(a)(1) or section 552.1175(a)(7) or they do not elect to restrict access to their information in accordance with section 552.1175(b), the information we have marked 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

⁷The 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).

excepted from public release. Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we have marked under section 552.130 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 the requirements of Section 552.021 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 represent the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the city must withhold the information we have marked under section 552.152 of the Government Code.⁸

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The city may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The city may withhold the information we have marked under section 552.108(b)(1) of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 143.089(g) of the Local Government Code. The city must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code. To the extent the individuals whose information is at issue are encompassed by section 552.1175(a)(1) or section 552.1175(a)(7) and they elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the cellular telephone numbers may only be withheld if a governmental body does not pay for the cellular telephone service. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must withhold the information we have marked under section 552.152 of the Government Code. The city must release the remaining information.

⁸As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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, 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 'Jahna Ward', with a stylized flourish at the end.

Jahna Ward
Assistant Attorney General
Open Records Division

JW/gw

Ref: ID# 769854

Enc. Submitted documents

c: Requestor
(w/o enclosures)