



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2019

Ms. Judi S. Rawls
Assistant City Attorney
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2019-15685

Dear Ms. Rawls:

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# 769845 (ORR# 03-67).

The Beaumont Police Department (the "department") received a request for the civil service file of a named officer; certain e-mails and internal communications sent to, received by, or concerning a named officer during a specified time period; all information pertaining to a specified case; and all body worn camera recordings and dashboard camera recordings of two named officers during a specified time period.¹ You state the department will provide some of the requested information to the requestor upon payment of costs. You claim the submitted body worn camera recordings were not properly requested pursuant to section 1701.661 of the Occupations Code. You also claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code.² Additionally, you state the department notified the Combined Law Enforcement Associations of Texas ("CLEAT")

¹You state, and provide documentation demonstrating, the department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Although you do not raise section 552.107 in your brief, we understand you to raise this exception based on your markings.

of the request for information pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from CLEAT. We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, you inform us, and provide documentation demonstrating, the requestor modified her request to exclude certain e-mails and documents from the submitted information. Thus, the excluded e-mails and documents, which we marked, are not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release such information in response to this request.⁴

Next, as you acknowledge, the submitted responsive information includes peace officers' body worn camera recordings. 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(a) of the Occupations Code provides the following:

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 recordings at issue were not properly requested pursuant to chapter 1701, our ruling does not reach this information and it need not be released.⁵ 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

³We 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.

⁴As we are able to make this determination, we need not address the arguments against disclosure of this information.

⁵As we are able to make this determination, we need not address the remaining arguments against disclosure of this information.

information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b). We note the remaining responsive information contains dashboard camera video recordings. This information does not consist of a body worn camera recording. Therefore, the dashboard camera video recordings are not subject to chapter 1701 of the Occupations Code and the department may not withhold them on that basis.

Next, we note the remaining responsive information includes a CR-3 accident report that is subject to chapter 550 of the Transportation Code. Section 552.101 of the Government Code exempts from public 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 subject to chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. *See* Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator’s accident report), .062 (officer’s accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c).

In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident report is confidential under section 550.065(b), and the department must withhold it under section 552.101 of the Government Code. However, section 550.065(c-1) requires the department to create a redacted accident report that may be requested by any person. *Id.* § 550.065(c-1). The redacted accident report may not include the information listed in subsection (f)(2). *Id.* Therefore, the requestor has a right of access to the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. Accordingly, the department must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code.

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

(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 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 id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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, 2017.⁶ The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we find the information we marked involves a juvenile offender, 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. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.⁷

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in part, the following:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Id. § 261.201(a). Upon review, we find the information we marked was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the

⁶Although you raise section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, we note the 85th Legislature repealed this provision effective September 1, 2017. *See Act of May 28, 2017, 85th Leg., R.S., ch. 746 (S.B. 1304), § 21.*

⁷As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 as a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁸ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses information protected by section 143.089 of the Local Government Code. You state the City of Beaumont (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 relating to a police officer: one that must be maintained as part of the officer’s civil service file and another that the police department may maintain for its own internal use. *See* Local Gov’t Code § 143.089(a), (g). 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, e.g.,* Attorney General Opinion JC-0257 (2000) (written reprimand is not disciplinary action for purposes of Local Government 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

⁸As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c). However, information that reasonably relates to a police officer's employment relationship and is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You assert the information you marked in Exhibit G, which consists of IA Pro printouts and use of force reports, and some of the remaining responsive information is excepted from disclosure under section 143.089(g). You state the information at issue is maintained exclusively in the department's internal files pursuant to section 143.089(g). You also state this information relates to incidents in which no disciplinary action was taken against any officers. You further inform us the requestor was referred to the city's civil service director as required by section 143.089(g) of the Government Code. As you acknowledge, use of force reports were the subject of prior litigation between the city and this office. *See City of Beaumont v. Abbott, Attorney Gen. of Tex.*, No. D-1-GV-07-002630 (345th Dist. Ct., Travis County, Tex., Oct. 26, 2010). As part of the subsequent settlement agreement, the parties agreed the IA Pro printouts were not confidential under section 143.089(g) in their entirety. Instead, the parties agreed that only portions of the printouts were confidential under this section. *See id.* (IA Pro printouts, as redacted by this office, subject to disclosure). Upon review, we find the information you marked in Exhibit G, and the additional information we marked and indicated, is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.⁹

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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. *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.). Accordingly, the department must withhold all public citizens' dates of birth of within the remaining responsive information under section 552.101 of the Government Code in conjunction with 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). Generally,

⁹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entire report must be withheld to protect the individual's privacy. In this instance, the requestor knows the identity of the individual involved in the report at issue. Therefore, withholding only the individual's identity or certain details of the report from this requestor would not preserve the subject individual's common-law right to privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the department must withhold the report we indicated in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.¹⁰

Further, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy). We note, however, the public generally has a legitimate interest in information relating to public employment and public employees. *See* Open Records Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). This office has also determined a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to public). We note the payroll deductions for federal withholding tax are protected by common-law privacy and must be withheld under section 552.101, but the payroll deductions for social security, mandatory retirement, and Medicare are not protected by common-law privacy and may not be withheld under section 552.101. *See, e.g.,* ORDs 600 at 9-12 (participation in TexFlex), 545 at 3-5; *see also* Attorney General Opinion GA-0572 at 4 (public employee's net salary protected by common-law privacy, but gross salary is not). Upon review, we find some of the remaining responsive information, which we marked and indicated, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining responsive information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. .

¹⁰As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Section 552.103 of the Government Code provides, in part, the following:

(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). See ORD 551.

The department states, and the submitted documents demonstrate, prior to the department's receipt of the instant request, a lawsuit styled *York v. City of Beaumont*, Cause No. 1:18-CV-00522, was filed and is currently pending in the United States District Court for the Eastern District of Texas, Beaumont Division. Therefore, we agree litigation was pending on the date the department received the present request for information. You represent the information at issue is related to the pending lawsuit. Based upon these representations and our review, we find the information at issue is related to the pending litigation. Accordingly, the department may generally withhold the information at issue under section 552.103(a) of the Government Code.

We note, however, the opposing party has seen or had access to some of the information at issue. The purpose of section 552.103 of the Government Code is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. See ORD 551 at 4-5. Thus, once the opposing party in pending litigation has seen or had access to information that is related to the litigation, there is no interest in withholding such information from public disclosure under section 552.103. See Open Records Decision Nos. 349 (1982), 320 (1982). Therefore, the department may not withhold the information the opposing party has seen or

had access to, which we marked for release, under section 552.103 of the Government Code. However, with the exception of the information we marked for release, the department may withhold the information we marked under section 552.103(a) of the Government Code. We note the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 at 3 (1982).

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You contend the information you marked consists of an attorney-client communication between department employees and outside counsel for the department that was made for the purpose of facilitating the rendition of professional legal services to the department. You represent this communication has remained confidential. Based upon these representations and our review, we find the information at issue consists of a privileged attorney-client communication. Accordingly, the department may withhold the information we marked under section 552.107(1) of the Government 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 claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *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. 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). You represent the information you marked relates to ongoing criminal investigations. Based upon this representation, we conclude the release 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 at issue.

Section 552.108(a)(2) 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 . . . 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). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You represent the information you marked pertains to concluded criminal investigations that did not result in conviction or deferred adjudication. Based upon your representation, we agree section 552.108(a)(2) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the information we marked and indicated under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code.¹¹

¹¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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. *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. We note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. We have marked information under section 552.117 that consists of the personal information of individuals who were employed by the department and the information is held in the 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. Accordingly, to the extent the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. Conversely, if the individuals whose information is at issue are not currently-licensed peace officers as defined by article 2.12, the information we marked may not be withheld under section 552.117(a)(2).

If the individuals whose information is at issue are not currently-licensed peace officers, then the marked information may be subject to section 552.117(a)(1) of the Government Code, which 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. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individuals whose information we marked timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the department may not withhold the information we indicated under section 552.117(a)(1).

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Upon review, we find some of the remaining responsive video recordings contain confidential motor vehicle record information. You state the department does not have the technological capability to redact the motor vehicle record information from the recordings at issue. Accordingly, the department must withhold the recordings we indicated in their entireties under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

Section 552.137 of the Government Code exempts 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). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Accordingly, the department must withhold the personal e-mail addresses, a representative sample of which we marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, to the extent the information you submitted contains information beyond the modified request, that information is not responsive to the instant request. As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The department must withhold the submitted accident report under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code, but must release the redacted accident report pursuant to section 550.065(c-1) of the Transportation Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The department must withhold the information you marked in Exhibit G and the additional information we marked and indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department must withhold all public citizens’ dates of birth, the report we indicated in its entirety, and the additional information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the information we marked for release, the department may withhold the information we marked under section 552.103(a) of the Government Code. The department may withhold the information we marked under section 552.107(1) of the Government Code. With the exception of basic information, which must be released, the department may withhold the information we marked and indicated under sections 552.108(a)(1) and 552.108(a)(2) of the Government Code. To the extent the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information we marked under section 552.117(a)(2) of the Government Code. To the extent the individuals whose information we marked are not currently-licensed peace officers, but timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. The department must withhold the recordings we indicated in their entireties under section 552.130 of the Government Code. The department must withhold the personal e-mail addresses, a representative sample of which we marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The department must release the remaining responsive 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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 769845

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)