



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2019

Ms. Leticia Brysch
City Clerk
Mr. Ignacio Ramirez, Sr.
City Attorney
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

Ms. Kristen Mills
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2019-21319

Dear Ms. Brysch, Mr. Ramirez, and Ms. Mills:

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# 778494 (PIR Nos. 14447; 14450; 14452; 14455; 14457; 14459; 14470; 14487; 14500; 14535; 14568; and 14715).

The City of Baytown and the Baytown Police Department (collectively, the "city") received eighteen requests from twelve different requestors for information related to a specified incident, the officer involved in that incident, and specified policies.¹ You inform us the city

¹We note some of the requestors clarified their requests for information. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). Further, you state you sent some requestors estimates of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimates of charges required the

does not have information responsive to portions of some of the requests.² You state you will withhold full and partial social security numbers under section 552.147(b) of the Government Code and a Form DD-214 pursuant to Open Records Decision No. 684 (2009).³ You claim some of the submitted information is not subject to the Act. In addition, you claim some of the submitted information is subject to previous rulings by our office. You further claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.119, 552.130, 552.137, and 552.152 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.⁴

Initially, we note some of the submitted information is not responsive to all the instant requests for information. Furthermore, you have marked some information that is not responsive because it does not relate to the officer involved in the specified incident. This ruling does not address the public availability of any information that is not responsive to the requests at issue, and the city is not required to release non-responsive information to the requestors who did not request such information in response to these requests.

Next, as noted above, you state you have redacted certain information pursuant to section 552.147(b) of the Government Code and Open Records Decision No. 684. However, you have also redacted additional information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See Gov't Code* § 552.301(a), (e)(1)(D). You do not assert, nor does

requestors to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). Although you inform us some of these requestors have not provided the required deposits, we note you have not withdrawn your requests for rulings from our office. Accordingly, we address your arguments against disclosure of the submitted information.

²The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

³Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a Form DD-214 or other military discharge record that is first recorded or first comes into the possession of a governmental body on or after September 1, 2003 under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision. *See ORD* 684.

⁴This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See Gov't Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

our review of our records indicate, the city has been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the additional redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code* § 552.302.

You state the submitted information includes a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (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.

Id. § 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 the submitted TCOLE identification number is a unique computer-generated number assigned to a peace officer for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Therefore, we find the submitted TCOLE number does not constitute public information under section 552.002 of the Government Code. Accordingly, the submitted TCOLE number is not subject to the Act and the city need not release this information to the requestors.⁵

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

Next, we must address the city's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). Additionally, under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

Upon review, we find the city did not fully comply with section 552.301 of the Government Code with regard to the information at issue. You state the city received the first requests for information on May 14, 2019. You inform us the city was closed on May 27, 2019, in observance of Memorial Day. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Thus, the city's ten-and fifteen-business-day deadlines under section 552.301 for these requests were May 29, 2019, and June 5, 2019, respectively. We note you did not raise section 552.103 of the Government Code with respect to the information responsive to the first requests, which you also submitted in connection with the final request, until July 2, 2019. Furthermore, you did not submit some of the information at issue to this office until June 6, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail and common or contract carrier). Consequently, we find you failed to comply with the requirements of section 552.301 of the Government Code with respect to the information submitted on June 6, 2019, and your claim under section 552.103 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although you claim section 552.103 of the Government Code for the information at issue, you have failed to establish a compelling reason to address this exception for the information at issue. However, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of section 552.101 to the information submitted on June 6, 2019.

Next, we note the submitted information includes city police 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) provides:

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, some requestors do not provide the requisite information under section 1701.661(a) for the submitted body worn camera recordings. As this information was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released to these requestors.⁶ We note, pursuant to section 1701.661(b), a “failure to provide all the information required by [[s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b). However, as the remaining requestors provided the requisite information under section 1701.661(a) for the body worn camera recordings at issue, we will consider whether these body worn camera recordings are otherwise excepted from disclosure.

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 section 1701.660 of the Occupations Code, which provides, in relevant part:

- (a) Except as provided by Subsection (b), a recording created with a body worn camera and documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

Occ. Code § 1701.660(a). You state the submitted body worn camera recordings relate to open and active criminal and administrative investigations of a city police officer. *See id.* § 1701.660(a). Further, we understand you do not seek to exercise your discretion to release the body worn camera recordings at issue pursuant to section 1701.660(b) of the Occupations Code. *See id.* § 1701.660(b) (law enforcement agency may release to the public a recording described by Subsection (a) if the law enforcement agency determines that the release furthers a law enforcement purpose). Accordingly, the city must withhold the submitted

⁶As we are able to make this determination, we need not address your remaining arguments against disclosure of this information to the requestors at issue.

body worn camera recordings from the remaining requestors under section 552.101 of the Government Code in conjunction with section 1701.660(a) of the Occupations Code.⁷

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted W-4 form constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 143.089 of the Local Government Code. You state 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 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). 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. 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.).

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

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 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).

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 (2000) (addressing functions of Local Gov’t Code § 143.089(a) and (g) files).

You state the information you have indicated 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 at issue, which we have marked, is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by the Medical Practice Act (the “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 that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has determined the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* Upon review, we find none of the information you have marked constitutes medical records subject to the MPA. Therefore, the city may not withhold any of the remaining responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center (the "TCIC") is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." Gov't Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See*

ORD 565. However, section 411.083 does not apply to active warrant information or other information relating to one's current involvement with the criminal justice system. *See* Gov't Code § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). We note, because the laws governing the dissemination of information obtained from the NCIC or TCIC are based on both law enforcement and privacy interests, the CHRI of a deceased individual that is obtained from DPS or another criminal justice agency may be disseminated only as permitted by subchapter F of chapter 411 of the Government Code. *See* ORD 565 at 10-12. Accordingly, the city must withhold the CHRI we have marked under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the city must withhold the employee's date of birth you have marked under section 552.102(a) of the Government Code.

As noted above, you state you will withhold some information under section 552.140 of the Government Code pursuant to Open Records Decision No. 684. We understand you to claim you will withhold some remaining information under section 552.101 in conjunction with common-law privacy pursuant to Open Records Decision No. 684. However, we note the information at issue is not the type of information that was at issue in Open Records Decision No. 684; thus, the city may not withhold this information pursuant to Open Records Decision No. 684 without asking for an attorney general decision. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also 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 (personal financial information includes choice of a particular insurance carrier), 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). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *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). Further, this office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications and job performance, especially where the applicant was seeking a position in law enforcement. *See* Open Records Decision Nos. 562 at 10 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow). 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, however, because the common-law right to privacy is a personal right that lapses at death, common-law privacy does not protect information that relates only to a deceased individual. *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broad. Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting RESTATEMENT (SECOND) OF TORTS § 652I (1977))); Attorney General Opinions JM-229 (1984), H-917 (1976); Open Records Decision No. 272 at 1 (1981).

Upon review, we conclude the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have marked and all living public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern, and the city may not withhold any of the remaining information you have marked under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.108(a) 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: (1) 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 release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You inform our office the Texas Rangers advised the submitted information relates to a pending criminal investigation, and release of that information would interfere with the investigation of the case. 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 you have marked. Accordingly, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers.⁸

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. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See Open Records Decision No. 506 at 5-7 (1988)* (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we find the city must withhold the information you have marked and the additional information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. We note the purpose of section 552.130 is to protect privacy. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917; ORD 272. Accordingly, except for the information we have marked for release, the city must withhold the motor vehicle record information you have marked and the additional information we have marked to withhold under section 552.130 of the Government Code. However, you have failed to demonstrate any of the remaining information at issue is subject to section 552.130. Thus, the city may not withhold any of the remaining information under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Gov't Code* § 552.137(a)-(c). The e-mail address you have marked is not of the type specifically excluded by section

⁸As we are able to make this determination, we need not address your remaining arguments against disclosure of this information.

552.137(c). *See id.* § 552.137(c). Accordingly, the city must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.

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 [required public disclosure] 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 state the remaining information you have marked consists of identifying information of the city's undercover officers. 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 in the information at issue. Accordingly, the city must withhold the identifying information of the undercover officers, which you have marked, under section 552.152 of the Government Code.

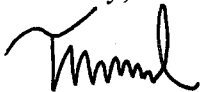
In summary, the submitted TCOLE number is not subject to the Act and the city need not release this information to the requestors. With respect to the requestors who did not provide the requisite information under section 1701.661(a) of the Occupations Code for the submitted body worn camera recordings, our ruling does not reach this information and it need not be released to these requestors. The city: (1) must withhold the submitted body worn camera recordings from the remaining requestors under section 552.101 of the Government Code in conjunction with section 1701.660(a) of the Occupations Code; (2) must withhold the submitted W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (3) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (4) must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (5) must withhold the employee's date of birth you have marked under section 552.102(a) of the Government Code; (6) must withhold the information we have marked and all living public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy; (7) may withhold the information you have marked under section 552.108(a)(1) of the Government Code on behalf of the Texas Rangers; (8) must withhold the information you have marked and the additional information we have marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body; (9) except for the information we have marked for release, must withhold the motor vehicle record information you have marked and the additional information we have marked to withhold under section 552.130 of the Government Code; (10) must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner of the address

affirmatively consents to its release; (11) must withhold the identifying information of the undercover officers, which you have marked, under section 552.152 of the Government Code; and (12) 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/eb

Ref: ID# 778494

Enc. Submitted documents

c: 12 Requestors
(w/o enclosures)