



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 11, 2019

Ms. Lynn Trumbul  
Senior Assistant City Secretary  
City of Hutto  
500 West Live Oak Street  
Hutto, Texas 78634

OR2019-25500

Dear Ms. Trumbul:

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# 785369 (PIR# R000625-061319).

The City of Hutto (the "city") received a request for personnel records of a named city police officer. You claim some of the submitted information is not subject to the Act. You also claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, 552.114, 552.115, 552.117, 552.1175, 552.119, 552.130, 552.136, 552.137, 552.140, and 552.147 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, you argue some of the submitted information is not "public information" subject to disclosure under the Act. 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

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<sup>1</sup>Although you also raise section 552.141 of the Government Code as an exception to disclosure, we note this exception applies only to information in an application for a marriage license, and the submitted documents do not include an application for a marriage license. Therefore, we assume you no longer assert this claim.

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

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You argue some of the submitted information consists of information used solely for the purpose of maintenance, manipulation, or protection of public property and has no other significance. Additionally, we understand a TCOLE identification number is a unique computer-generated number assigned to licensees for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. Based upon your representations and our review, we find the submitted TCOLE number, along with the username and password information we marked, are not "public information" for purposes of the Act, and the city is not required to release this information in response to this request.<sup>2</sup>

Next, we note the remaining information includes information subject to section 552.022(a) of the Government Code, which provides, in relevant part:

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

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

...

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

*Id.* § 552.022(a)(1), (17). The remaining information includes a completed investigation that is subject to section 552.022(a)(1), which we marked. The information subject to section 552.022(a)(1) must be released unless it is excepted from disclosure under section 552.108 of the Government Code, or is made confidential under the Act or other law. *See id.* § 552.022(a)(1). The remaining information also includes a court-filed document that is subject to section 552.022(a)(17), which we marked. The information subject to section 552.022(a)(17) must be released unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although you assert some of the information subject to section

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

552.022(a)(1) is excepted from disclosure under section 552.111 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, the city may not withhold any of the information subject to section 552.022(a)(1) under section 552.111. Additionally, you seek to withhold the information subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public records. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Therefore, no portion of the court-filed document subject to section 552.022(a)(17) may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, as sections 552.117 and 552.130 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the information subject to section 552.022. Additionally, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your arguments under section 552.108 for the information subject to section 552.022(a)(1). We will also consider your remaining arguments for the information not subject to section 552.022 of the Government Code.

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. Section 552.101 encompasses the federal Fair Credit Reporting Act (the “FCRA”), 15 U.S.C. § 1681 *et seq.* Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See id.* § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining “person” and “consumer report”). Section 1681b further provides “[a] person shall not use or obtain a consumer report for any purpose unless . . . the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.” *Id.* § 1681b(f). Section 1681e provides for the maintenance of procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See id.* § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (stating that federal law strictly limits distribution of consumer credit reports by credit reporting agencies). We understand you to assert the information you marked consists of consumer credit reports furnished to the city for the purposes of section 1681b of the FCRA. Upon review, we agree some of the information at issue, which we marked, consists of a consumer report furnished to the city by a consumer agency for purposes of section 1681b of the FCRA. We note the FCRA does not permit the disclosure of information in a consumer report for the purpose of responding to a request for information under the Act. Accordingly, the city must withhold the information we marked under section 552.101 of

the Government Code in conjunction with the FCRA.<sup>3</sup> However, upon review, we find the remaining information you marked does not contain information from a consumer report subject to the FCRA. Therefore, the remaining information at issue is not confidential under the FCRA, and the city may not withhold this information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses section 1701.306 of the Occupations Code, which pertains to L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms required by TCOLE. Section 1701.306 provides, in part:

(a) [TCOLE] may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCOLE]. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Accordingly, the city must withhold the L-2 and L-3 declaration forms we marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.<sup>4</sup>

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 1703.306 of the Occupations Code, which provides:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

*Id.* § 1703.306. Upon review, we find the information we marked constitutes information that was acquired from a polygraph examination and is, therefore, within the scope of section 1703.306. It does not appear the requestor falls into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.<sup>5</sup>

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code, which pertains to criminal history record information ("CHRI"). CHRI generated by the National Crime Information Center or by the Texas Crime Information Center 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 federal government or other states. *See* Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to CHRI it generates. *See id.* 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 F or subchapter E-1, of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another

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

criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F, of the Government Code. Upon review, we find some of the information at issue consists of CHRI that is confidential under section 411.083. Accordingly, the city must withhold the CHRI we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.<sup>6</sup>

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.” *Id.* § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test encompassed by section 552.101 of the Government Code, 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). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Accordingly, the city must withhold the dates of birth of city employees under section 552.102(a) of the Government Code.<sup>7</sup> Having carefully reviewed the information at issue, we find no portion of the remaining information is subject to section 552.102(a) of the Government Code, and the city may not withhold any of the remaining information on that basis.

As stated above, section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which is subject to the two-prong test described 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 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.). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We also note an individual’s

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

<sup>7</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. *See* Open Records Decision Nos. 554 (1990), 448 (1986). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (common-law privacy protects mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (sources of income not related to financial transaction between individual and governmental body 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. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 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). Although the references to an employee's previous salaries may be considered highly intimate or embarrassing, we find there is a legitimate public interest in this information as it pertains to the employee's employment qualifications and background. *See* ORD 455 at 9 (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question").

Upon review, we find some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold all public citizens' dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>8</sup> However, we find you failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108 of the Government Code provides, in 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:

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(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[.]

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<sup>8</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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). However, section 552.108 is generally not applicable to records of an investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (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); Open Records Decision No. 350 at 3-4 (1982).

You state the information at issue relates to a concluded criminal investigation that did not result conviction or deferred adjudication. Based upon your representations and our review, we conclude section 552.108(a)(2) is applicable to some of the information at issue, which we marked. Accordingly, the city may withhold the information we marked under section 552.108(a)(2) of the Government Code.<sup>9</sup> However, we find the remaining information at issue is either purely administrative in nature or is information you have not explained that pertains to the detection, investigation or prosecution of a criminal case that concluded in a final result other than a conviction or deferred adjudication. Thus, we find you failed to demonstrate the applicability of sections 552.108(a)(2) and 552.108(b)(2) to the remaining information at issue. 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 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *See Gov't Code § 552.108(b)(1); see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex1977)). 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 laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 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.

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<sup>9</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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* ORD 562 at 10 (construing statutory predecessor). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (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 contend the information at issue consists of internal records that are maintained for use in law enforcement matters. Based upon your representations and our review, we agree the release of some of the information at issue, which we marked, would interfere with law enforcement. Accordingly, the city may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you failed to demonstrate the release of the remaining information at issue would interfere with law enforcement or prosecution efforts. Therefore, the city may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995). However, a governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *See Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157; ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See Open Records Decision No. 313 at 3 (1982)*. When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See Open Records Decision No. 561 at 9 (1990)*.

You seek to withhold some of the remaining information under section 552.111 of the Government Code on the basis of the deliberative process privilege. You state the information at issue “contain[s] interagency and intraagency memoranda and should be excepted from disclosure.” However, upon review, we find the information at issue consists of information that is administrative or purely factual in nature or does not rise to the level of policymaking. Thus, we find you failed to demonstrate the remaining information reveals advice, opinions, or recommendations that pertain to policymaking. Therefore, the city may not withhold any of the remaining information under section 552.111 of the Government Code.

Section 552.114(b) of the Government Code excepts from disclosure student records “at an educational institution funded wholly or partly by state revenue.” *See Gov’t Code § 552.114(b)*. This office has determined the same analysis applies under section 552.114 and the Family Educational Rights and Privacy Act of 1974 (“FERPA”), section 1232g of title 20 of the United States Code. FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds. We note section 552.114 and FERPA apply only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. *See 34 C.F.R. § 99.33(a)(2)*. You claim some of the remaining information is confidential under section 552.114. We note the city is not an “educational institution” for purposes of section 552.114. *See Open Records Decision No. 309 at 3 (1983) (City of Forth Worth not an “educational agency” for purposes of FERPA)*. Further, we have no indication any portion of the information at issue was transferred directly to the city from an educational institution. Therefore, we conclude the city may not withhold any of the remaining information on the basis of section 552.114 of the Government Code.

Section 552.115 excepts from disclosure “[a] birth or death record maintained by the vital statistics unit of the Department of State Health Services or a local registration official[.]” *Gov’t Code § 552.115*. Section 552.115 is applicable only to information maintained by the vital statistics unit or local registration official. *See Open Records Decision No. 338 (1982)*. The submitted birth certificate is maintained by the city, and not by a vital statistics unit or local registration official. Therefore, the city may not withhold it under section 552.115 of the Government Code.

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 encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *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 also note section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. However, section 552.117(a)(2) generally does not apply to applicants for employment. *See* ORD 455 (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). In this instance, we are unable to determine whether some of the individuals whose information is at issue are currently or were formerly employed by the city as licensed peace officers as defined by article 2.12; therefore, we must rule conditionally. If the individuals at issue are currently employed by the city as licensed peace officers as defined by article 2.12, then the city must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service. Additionally, if the individuals at issue were formerly employed by the city as licensed peace officers and are currently-licensed peace officers, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service. Conversely, if the individuals at issue are not currently or were never employed by the city as licensed peace officers as defined by article 2.12, the city may not withhold the information at issue under section 552.117(a)(2) of the Government Code. Regardless, the remaining information you marked is not subject to section 552.117(a)(2) and it may not be withheld on that basis.

If the individuals at issue are currently or were formerly employed by the city, but are not currently licensed peace officers, then their personal 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 number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). As noted above, section 552.117 protects a personal cellular telephone number if the cellular telephone service is not paid for by a governmental body. ORD 670 at 6; *cf.* ORD 506 at 5-6. Additionally, as noted above, section 552.117 is not applicable to a former spouse and does not protect the fact that a governmental employee has been divorced. We note the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117(a)(1) (providing that employees of governmental entities may protect certain personal information in the hands of their employer); ORD 455. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city 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. Upon review, we conclude, if the individuals at issue are currently or were formerly employed by the city, but are not currently-licensed peace officers, and timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service. Conversely, to the extent the individuals were never employed by the city or if the individuals at issue did not timely request confidentiality under section 552.024, the city may not withhold this information under section 552.117(a)(1). Regardless, the remaining information you marked is not subject to section 552.117(a)(1) and it may not be withheld on that basis.

If the individuals at issue were never employed by the city but are currently licensed peace officers, their information may be protected by section 552.1175 of the Government Code. Additionally, some of the remaining information, which we marked, may relate to an individual who is a currently licensed peace officer of another law enforcement agency. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Thus, if the individuals at issue were never employed by the city but are currently licensed peace officers, and if the individuals at issue elect to restrict access to their information in accordance with section 552.1175(b), then the city must withhold the information we marked under section 552.1175 of the Government Code. If the individuals at issue are not licensed peace officers or do not elect to restrict access to the information in accordance with section 552.1175(b), the marked information may not be withheld under section 552.1175 of the Government Code.

Section 552.130 of the Government Code exempts 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 id.* § 552.130. Upon review, we agree some of the remaining information contains motor vehicle record information subject to section 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. However, we find you failed to demonstrate any of the remaining information is subject to section 552.130. Therefore, the city may not withhold any of the remaining information under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Accordingly, the city must withhold the insurance policy number we marked under section 552.136 of the Government Code.

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 city must withhold the e-mail addresses you marked and we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.140 of the Government Code provides a military veteran’s DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). The city came into possession of the submitted military discharge records after September 1, 2003. Accordingly, we conclude the city must withhold the military discharge records we marked under section 552.140 of the Government Code.

Section 552.147 of the Government Code exempts from disclosure the social security number of a living person. *See id.* § 552.147. To the extent the marked social security numbers are not confidential under section 552.117 or section 552.1175 of the Government Code, the city may withhold them under section 552.147 of the Government Code. However, upon review, we find the city failed to demonstrate section 552.147 is applicable to any of the remaining information. Therefore, the city may not withhold any of the remaining information under section 552.147 of the Government Code.

In summary, the submitted TCOLE number, along with the username and password information we marked, are not “public information” for purposes of the Act, and the city is not required to release this information. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with the FCRA. The city must withhold the L-2 and L-3 declaration forms we marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The city must withhold the CHRI we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the dates of birth of city employees under section 552.102(a) of the Government Code. The city must withhold all public citizens’ dates of birth and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information we marked under section 552.108(a)(2) of the Government Code. The city may withhold the information we marked under section 552.108(b)(1) of the Government Code. If the individuals at issue are currently employed by the city as licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, or if the individuals at issue were formerly employed by the city as licensed peace officers and are currently-licensed peace officers, the city must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service. If the individuals at issue are currently or were

formerly employed by the city, but are not currently-licensed peace officers, and timely requested confidentiality under section 552.024 of the Government Code, then the city must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the city may only withhold the marked cellular telephone numbers if a governmental body did not pay for the cellular telephone service. If the individuals at issue were never employed by the city but are currently licensed peace officers, and if the individuals at issue elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, then the city must withhold the information we marked under section 552.1175 of the Government Code. The city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The city must withhold the insurance policy number we marked under section 552.136 of the Government Code. The city must withhold the e-mail addresses you marked and we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The city must withhold the military discharge records we marked under section 552.140 of the Government Code. To the extent the marked social security numbers are not confidential under section 552.117 or section 552.1175 of the Government Code, the city may withhold them under section 552.147 of the Government Code. The city must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/gw

Ref: ID# 785369

Enc. Submitted documents

c: Requestor  
(w/o enclosures)