



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 17, 2019

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2019-35639

Dear Ms. Lentz:

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# 803879.

The Williamson County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for two categories of information pertaining to certain communications involving two named individuals during a defined time period. You claim some of the submitted information is not subject to the Act. You also state you will redact the dates of birth of members of the public pursuant to the previous determination issued in Open Records Letter No. 2016-21706 (2016).<sup>1</sup> Additionally, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, 552.1175, 552.136, 552.137, and 552.152 of the Government Code.<sup>2</sup> We have considered your arguments and reviewed the submitted information, portions of which consist of representative samples.<sup>3</sup>

---

<sup>1</sup> Open Records Letter No. 2016-21706 authorizes the sheriff's office to withhold dates of birth of members of the public under section 552.101 of the Government Code in conjunction with common-law privacy without the necessity of requesting an attorney general decision.

<sup>2</sup> We note although you raise section 552.108(a)(1) of the Government Code, you make no arguments to support this assertion. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

<sup>3</sup> We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records

Initially, section 552.301(e)(1)(D) states a governmental body asking for an attorney general decision must, within fifteen business days of receiving a request, provide the attorney general with “a copy of the specific information requested, *or submit representative samples of information if a voluminous amount of information was requested*[.]” Gov’t Code § 552.301(e)(1)(D) (emphasis added). We note although you state portions of the submitted information consist of representative samples, you have submitted a voluminous amount of information. The information submitted consists of 2,602 separate files. We have identified and reviewed a representative sample of the voluminous information submitted.<sup>4</sup>

Next, we note the submitted information includes officers’ Texas Commission on Law Enforcement (“TCOLE”) identification numbers. Section 552.002(a) of the Government Code defines “public information” as the following:

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

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Gov’t Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information

---

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.

<sup>4</sup> To the extent the sheriff’s office identifies confidential information subject to a provision not addressed in this ruling, the sheriff’s office should contact the Open Government Hotline.

made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database, and may be used as an access device number on the TCOLE website. Thus, we find the officers' TCOLE numbers do not constitute public information under section 552.002 of the Government Code. Therefore, the officers' TCOLE numbers are not subject to the Act and need not be released to the requestor.

Additionally, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

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

...

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures; [and]

...

(18) a settlement agreement to which a governmental body is a party.

*Id.* § 552.022(a)(8), (18). The submitted information includes organization charts that are subject to section 552.022(a)(8) of the Government Code and a settlement agreement subject to section 552.022(a)(18). *Id.* § 552.022(a)(8), (18). The sheriff's office must release the information pursuant to sections 552.022(a)(8) and 552.022(a)(18) unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(8). The sheriff's office seeks to withhold the information subject to section 552.022(a)(8) under section 552.108 of the Government Code and the information subject to section 552.022(a)(18) under sections 552.107 of the Government Code. Although the sheriff's office seeks to withhold this information under sections 552.107 and 552.108 of the Government Code, these sections are discretionary exceptions and do not make information confidential under the Act. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Accordingly, you may not withhold the information subject to section 552.022 of the Government Code under sections 552.107 and 552.108 of the Government Code. As you raise no other exceptions to disclosure for the information subject to section 552.022(a)(8), the sheriff's office must release the information at issue. Additionally, we note the Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See*

*In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your attorney-client privilege argument under Texas Rule of Evidence 503 for the information subject to section 552.022(a)(18). Additionally, because section 552.152 of the Government Code makes information confidential for purposes of section 552.022, we will consider the applicability of this exception to the information subject to section 552.022(a)(18). Further, we will address your arguments under sections 552.107 and 552.108 for the remaining information not subject to section 552.022 of the Government Code.

Texas Rule of Evidence 503(b)(1) provides the following:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made to further the rendition of professional legal services to the client or reasonably necessary to transmit the communication. *Id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* ORD 676. Upon a demonstration of all three factors, the entire communication is confidential under rule 503 provided the client has not waived the privilege or the

communication does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero Energy Corp.*, 973 S.W.2d 453, 457 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the information subject to section 552.022(a)(18) consists of communications between Williamson County attorneys and sheriff's office employees that were made for the purpose of facilitating the rendition of professional legal services to the sheriff's office. You state these communications were intended to be confidential and have remained confidential. However, we note the information at issue was shared with an individual who is not a privileged party. Therefore, this information subject to section 552.022(a)(18) of the Government Code is not privileged under Texas Rule of Evidence 503 and the sheriff's office may not withhold it on this basis.

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 information made confidential by other statutes, such as section 261.201(a) of the Family Code, which provides, in relevant part:

(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 this chapter 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 this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state the information you marked was used in investigations of alleged child abuse under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201 of Family Code). You do not indicate the sheriff's office has adopted any rules that would permit the release of the responsive information. Accordingly, we find the information at issue is subject to chapter 261 of the Family Code. Therefore, we conclude the information you marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>5</sup> *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

---

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

Section 552.101 of the Government Code also encompasses 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). We note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990). We also note some of the remaining information pertains to de-identified individuals whose privacy interests are, thus, protected.

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the information we marked for release, the sheriff's office must withhold the information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>6</sup> However, we find the sheriff's office has failed to demonstrate the remaining information it marked is highly intimate or embarrassing and not of legitimate public interest. Accordingly, the sheriff's office may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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

- (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

---

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

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 section 552.103(a) applies in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the requested information is related to that litigation. *See Univ. of Tex. LawSch. 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 [14th 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 at 4. We note contested cases conducted under the Administrative Procedure Act (the "APA"), chapter 2001 of the Government Code, are considered litigation for the purposes of section 552.103. *See* Open Records Decision No. 588 at 7 (1991). We further note a contested case before the State Office of Administrative Hearings ("SOAH") is considered litigation for the purposes of the APA. *See id.*

The sheriff's office has demonstrated before it received the requests for information, a named individual filed a petition with the Texas Commission on Law Enforcement challenging the status of his discharge from the sheriff's office. We understand this matter was referred to SOAH for a contested case hearing challenging the named individual's F-5 Report of Separation in accordance with section 1701.4525 of the Occupations Code. *See* Occ. Code § 1701.4525 (establishing process for officer to contest information in employment termination report). Section 1701.4525(d) states "[a] proceeding to contest information in an employment termination report is a contested case under Chapter 2001, Government Code." *Id.* § 1701.4525(d). Thus, we agree litigation was pending when the sheriff's office received the requests. Furthermore, we find the information you marked is related to the pending proceedings for purposes of section 552.103. Therefore, the sheriff's office may withhold the information you marked under section 552.103 of the Government Code.<sup>7</sup>

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that

---

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

has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). The elements of the privilege under section 552.107(1) are the same as those discussed above for rule 503. 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. ORD 676 at 6-7. 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*, 922 S.W.2d at 923.

You state the remaining information you marked consists of communications between Williamson County attorneys and sheriff's office employees that were made for the purpose of facilitating the rendition of professional legal services to the sheriff's office. You indicate the communications were intended to be confidential and have remained confidential. However, we note some of the information at issue was shared with individuals whom you have not demonstrated to be privileged parties. Therefore, you have failed to establish how the information at issue, which we marked for release, constitutes privileged attorney-client communications for the purposes of section 552.107(1). Accordingly, the sheriff's office may not withhold the information at issue under section 552.107(1) of the Government Code. However, we find the remaining information at issue consists of privileged attorney-client communications the sheriff's office may generally withhold under section 552.107(1) of the Government Code. We note, however, some of these otherwise privileged e-mail strings include e-mails received from or sent to non-privileged parties. Furthermore, if the e-mails received from or sent to non-privileged parties are removed from the otherwise privileged e-mail strings in which they appear and stand alone, they are responsive to the request for information. Therefore, if these non-privileged e-mails, which we marked, are maintained by the sheriff's office separate and apart from the otherwise privileged e-mail strings in which they appear, then the sheriff's office may not withhold these non-privileged e-mails under section 552.107(1) 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. 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 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). 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 at 327 (Tex. App.—Austin 2002, no pet.). 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., Open Records Decision Nos. 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 state the information you indicated would interfere with law enforcement or prosecution of crime. You state the release of the information at issue would place individuals at an advantage in a confrontation with deputies or would impede the ability of the sheriff’s office to enforce laws and prevent crime. Based on 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 sheriff’s office may withhold the information we marked under section 552.108(b)(1) of the Government Code. However, we find you have not demonstrated any of the remaining information at issue would interfere with law enforcement or crime prevention. Accordingly, the sheriff’s office may not withhold any of the remaining information you indicated 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. 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. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related

communications that did not involve policymaking). 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).

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* 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).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You state the information you marked and indicated consists of advice, opinions, and recommendations of sheriff's office employees and officials regarding policymaking matters. Upon review, we find the sheriff's office may withhold the information we marked under section 552.111 of the Government Code. However, the remaining information is either factual in nature, consists of internal administrative matters that do not rise to the level of policymaking, or was shared with third parties with whom you have not demonstrated a privity of interest. Therefore, we find the sheriff's office has failed to demonstrate the remaining information at issue constitutes internal communications containing advice, recommendations, or opinions reflecting the policymaking processes of the sheriff's office. Accordingly, the sheriff's office may not withhold any of the remaining information under section 552.111 of the Government Code.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. 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, to the extent the information we marked relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), it must be withheld from disclosure under section 552.1175 of the Government Code. If the individual whose information is at issue is not currently a licensed peace officer or does 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. In addition, we conclude section 552.1175 of the Government Code is not applicable to the remaining information, and the sheriff's office may not withhold it on that ground.<sup>8</sup>

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. *Id.* § 552.117(a)(2). 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). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. 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. If the individuals at issue are currently licensed peace officers as defined by article 2.12, then the sheriff's office must withhold the information you marked, and the additional information we marked, under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. Conversely, if the individuals at issue are not currently licensed police officers as defined by article 2.12, the information at issue may not be withheld under section 552.117(a)(2) of the Government Code.

If the individuals at issue 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. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The sheriff's office may only withhold the information at issue under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals at issue made timely elections under section 552.024, the sheriff's office must withhold the information you marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. Conversely, if the

---

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

individuals at issue did not make timely elections under section 552.024, their information may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country.<sup>9</sup> Gov't Code § 552.130(a)(1), (2). Accordingly, the sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states "[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"). Thus, the sheriff's office must withhold the bank account numbers we marked in the remaining information under section 552.136 of the Government Code. However, the sheriff's office has not established any of the remaining information consists of an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, the sheriff's office may not withhold any of the remaining information under section 552.136 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). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the sheriff's office must withhold the e-mail addresses you marked and the additional e-mail addresses we marked in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

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.

---

<sup>9</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

*Id.* § 552.152. The sheriff's office represents the release of the undercover officers' identities would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the sheriff's office must withhold the identifying information of the undercover officers, which you marked, under section 552.152 of the Government Code.

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

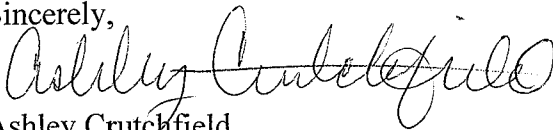
In summary, the officers' TCOLE numbers are not subject to the Act and need not be released. The sheriff's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the information we marked for release, the sheriff's office must withhold the information you marked, and all public citizens' dates of birth, under section 552.101 of the Government Code in conjunction with common-law privacy. The sheriff's office may withhold the information you marked under section 552.103 of the Government Code. With the exception of the information subject to section 552.022(a)(18) of the Government Code and the information we marked for release, the sheriff's office may generally withhold the remaining information you marked under section 552.107(1) of the Government Code; however, if the non-privileged e-mails we marked are maintained by the sheriff's office separate and apart from the otherwise privileged e-mail strings in which they appear, then the sheriff's office may not withhold these non-privileged e-mails under section 552.107(1) of the Government Code. The sheriff's office may withhold the information we marked under section 552.111 of the Government Code. To the extent the information we marked relates to a licensed peace officer who elects to restrict access to his information in accordance with section 552.1175(b), the sheriff's office must withhold the information we marked under section 552.1175 of the Government Code. If the individuals at issue are currently licensed peace officers, then the sheriff's office must withhold the information you marked, and the additional information we marked, under section 552.117(a)(2) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. If the individuals at issue are not currently licensed peace officers, but made timely elections under section 552.024, the sheriff's office must withhold the information you marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code; however, the sheriff's office may only withhold the marked cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. The sheriff's office must withhold the bank account numbers we

marked in the remaining information under section 552.136 of the Government Code. The sheriff's office must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The sheriff's office must withhold the e-mail addresses you marked and the additional e-mail addresses we marked in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies. The sheriff's office must withhold the identifying information of the undercover officers, which you marked, under section 552.152 of the Government Code. The sheriff's office must release the remaining information; however, any information subject to copyright may only be released in accordance with copyright law.

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,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/mo

Ref: ID# 803879.

Enc. Submitted documents

c: Requestor  
(w/o enclosures)