



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2020

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2020-00788

Dear Mr. Kopp:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 805035 (COSA File No. W285349).

The City of San Antonio (the "city") received a request for information related to the suspension of fourteen named city police officers.¹ We understand the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim the submitted body worn camera recordings were not properly requested pursuant to section 1701.661 of the Occupations Code. Additionally, you claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108,

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

² Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

552.117, and 552.152 of the Government Code.³ We have considered your arguments and reviewed the submitted representative sample of information.⁴

Initially, you state, and we agree, the information you indicated is not responsive to the instant request. Additionally, we note the information we marked is not responsive to the instant request because it does not consist of the requested records pertaining to the named city police officers. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

Next, as you acknowledge, the submitted responsive information includes peace officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) of the Occupations Code provides the following:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.⁵ However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b).

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 information subject to

³ Although you also raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the correct exception to raise for information the city holds in its capacity as employer.

⁴ 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 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.

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

chapter 550 of the Transportation Code. Section 550.065 applies only to a written report of an accident required under section 550.061, 550.062, or 601.004. Transp. Code § 550.065(a)(1). Chapter 550 requires the creation of a written report when the accident resulted in injury to or the death of a person or damage to the property of any person to the apparent extent of \$1,000 or more. *Id.* §§ 550.061 (operator's accident report), .062 (officer's accident report). An accident report is privileged and for the confidential use of the Texas Department of Transportation or a local governmental agency of Texas that has use for the information for accident prevention purposes. *Id.* § 550.065(b). However, a governmental entity shall release an accident report in accordance with subsections (c) and (c-1). *Id.* § 550.065(c), (c-1). Section 550.065(c) provides a governmental entity shall release an accident report to a person or entity listed under this subsection. *Id.* § 550.065(c). In this instance, the requestor is not a person listed under section 550.065(c). Thus, the submitted accident reports are confidential under section 550.065(b), and the city must withhold them under section 552.101 of the Government Code.⁶

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). We note section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You assert the information you marked and indicated relates to criminal investigations that concluded in results other than convictions or deferred adjudications. Upon review, we find some of the information at issue, which we marked and indicated, is subject section 552.108(a)(2) of the Government Code, and may generally be withheld on that basis. We note, however, the remaining information consists of internal investigation materials and is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information, and the city may not withhold the remaining information on that basis.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with

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

the exception of basic information, the city may withhold the information we marked and indicated under section 552.108(a)(2) of the Government Code.⁷

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides “an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. “Personal information” means “information that identifies a person,” and includes a person’s photograph, social security number, driver identification number, name, and address, but does not include a zip code, telephone number, or medical and disability information. *Id.* § 730.003(6). The Department of Public Safety (“DPS”) is an “agency” for purposes of chapter 730. *See id.* § 730.003(1) (“agency” is state agency that compiles or maintains motor vehicle records). You state the information you indicated consists of personal information that was obtained by the city’s police department (the “department”) from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in carrying out its functions). An authorized recipient of personal information may not re-disclose the personal information and to do so is a misdemeanor offense. *Id.* § 730.013(a), (d). Accordingly, the city must withhold the personal information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. However, the remaining information is not confidential under section 730.004 or 730.013, and the city may not withhold it under section 552.101 on either of those grounds.

Section 552.101 of the Government Code also encompasses section 772.218 of the Health and Safety Code, which applies to an emergency communication district for a county with a population of more than 1.5 million and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). You state the city is part of an emergency communication district that is subject to section 772.218 of the Health and Safety Code. You assert the telephone numbers you marked in the remaining information consists of originating telephone numbers of a 9-1-1 callers. Accordingly, to the extent the telephone numbers you marked were provided by a service supplier, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. However, if the information at issue was not supplied by a 9-1-1 service supplier, then the city may not withhold this information under section 552.101 on the basis of section 772.218 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information made confidential by chapter 611 of the Health and Safety Code. Section 611.002 pertains to mental health records and provides, in pertinent part,

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

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

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find a portion of the remaining information, which we marked, consists of a mental health record that is subject to chapter 611 of the Health and Safety Code. Accordingly, the city must withhold the marked mental health record under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code.⁸

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 the information we marked is confidential under the MPA. Accordingly, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find none of the remaining information constitutes medical records subject to the MPA. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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

Section 552.101 of the Government Code also encompasses information that is made confidential by the Homeland Security Act (the "HSA"). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.176(a) provides:

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

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Gov't Code § 418.176(a). The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. See ORD 649 at 3 (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert some of the remaining information is confidential under section 418.176 of the Government Code. You state the submitted automatic vehicle locator ("AVL") records are "collected, assembled, and maintained by the [department] for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity." You further state the AVL records "ensure that the location of department officers is known at all times by the department through tracking of marked patrol units." You explain the AVL "records reflect patterns of officer deployment and varying methods of response and associated response times in real-time." Upon review, we find you demonstrated the submitted AVL records relate to the department's staffing requirements and tactical plan, and are maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, we agree the city must withhold the AVL records we marked under section 552.101 of the Government Code in conjunction with section 418.176(a) of the Government Code.⁹ However, upon review, we find you have failed to demonstrate any of the remaining information is collected, assembled, or maintained for the purpose of preventing, detecting,

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

responding to, or investigating an act of terrorism or related criminal activity and relates to staffing requirements of an emergency response provider or relates to a tactical plan of the provider. Therefore, we conclude, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.

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.” *Id.* § 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* ORD 565. 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 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 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 no portion of the remaining information constitutes CHRI for purposes of chapter 411 of the Government Code. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by section 801.353 of the Occupations Code. This section provides in part the following:

(a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian’s client.

...

(f) A veterinarian does not violate this section by providing the name or address of a client, or the rabies vaccination status of a specific client’s specific animal, to a public health authority, veterinarian, physician, or other licensed health care professional who requests the identity of the client to obtain information for:

- (1) the verification of a rabies vaccination;
- (2) other treatment involving a life-threatening situation; or

(3) a public health purpose.

(g) A public health authority that receives information under Subsection (f) shall maintain the confidentiality of the information, may not disclose the information under [the Act] and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Occ. Code § 801.353(a), (f)-(g). Subsection 801.353(g) prohibits the public disclosure of information obtained by a public health authority from a veterinarian pursuant to subsection 801.353(f) for the reasons enumerated in subsection 801.353(f). Section 801.353 limits a veterinarian's release of information concerning the veterinarian's care of an animal to certain circumstances. *See id.* The remaining information contains a veterinary record that the city asserts is confidential under section 801.353. However, you do not inform us this record was created by city veterinary staff. *See id.* § 801.353(a)-(b). You also do not inform us this record was provided to city by the veterinarian at issue pursuant to section 801.353(f). *See id.* § 801.353(f)-(g). Therefore, we conclude you have not established this information is confidential under section 801.353 of the Occupations Code, and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 143.090 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You represent the photographs you marked and indicated depict police officers. You state the exceptions under section 143.090 do not apply. Thus, we agree the city must withhold the photographs of the police officers you marked and indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local 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.”¹⁰ 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). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. Accordingly, the city must withhold the employees’ dates of birth in the remaining information under section 552.102(a) 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. Upon review, we find some of the remaining information is subject to section 552.117(a)(2). Accordingly, with the exception of the information we marked for release, the city must withhold the information you marked and indicated, and the additional information we marked and indicated, under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked and indicated cellular telephone numbers if the cellular telephone services are not paid for by a governmental body.¹¹ However, we find you failed to demonstrate the applicability of section 552.117(a)(2) to any portion of the remaining information, and the city may not withhold it on that basis.

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). Further, 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

¹⁰ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

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.). Furthermore, 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, e.g.*, Open Records Decision Nos. 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 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Ellen*, 840 S.W.2d at 519 (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). However, we note the names, addresses, and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (home addresses and telephone numbers not protected under privacy).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note some of the information at issue pertains to individuals who will be de-identified and whose privacy interests will, thus, be protected. Accordingly, with the exception of the information we marked for release, the city must withhold all identifiable public citizens' dates of birth, the information you marked and indicated, and the additional information we marked and indicated, under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 of the Government Code on that ground.

As noted above, we understand the city will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional motor vehicle record information. Section 552.130 excepts from public disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov't Code § 552.130. Upon review, we find the city must withhold the motor vehicle record information you marked, as well as the additional motor vehicle record information we marked, 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 numbers we marked under section 552.136 of the Government Code.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You inform us the remaining information identifies undercover police officers. You represent release of their identities would subject them to substantial threats of physical harm. Therefore, we find section 552.152 is applicable to the identities of the undercover officers within the information at issue. Accordingly, the city must withhold the identifying information of the undercover officers you marked under section 552.152 of the Government Code.¹²

We note some of the remaining information at issue may 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, as the body worn camera recordings at issue were not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The city must withhold the submitted accident reports under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. With the exception of basic information, the city may withhold the information we marked and indicated under section 552.108(a)(2) of the Government Code. The city must withhold the personal information we marked under section 552.101 of the Government Code in conjunction with sections 730.004 and 730.013 of the Transportation Code. To the extent the telephone numbers you marked were provided by a service supplier, the city must withhold this information under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The city must withhold the marked mental health record under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA. The city must withhold the AVL records we marked under section 552.101 of the Government Code in conjunction with section 418.176(a) of the Government Code. The city must withhold the photographs of the police officers you marked and indicated under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The city must withhold the employees' dates of birth in the remaining information under section

¹² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

552.102(a) of the Government Code. With the exception of the information we marked for release, the city must withhold the information you marked and indicated and we marked and indicated under section 552.117(a)(2) of the Government Code; however, the city may only withhold the marked and indicated cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. With the exception of the information we marked for release, the city must withhold all identifiable public citizens' dates of birth and the information you marked and indicated and we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the motor vehicle record information you marked and we marked under section 552.130 of the Government Code. The city must withhold the insurance policy numbers we marked under section 552.136 of the Government Code. The city must withhold the identifying information of the undercover officers you marked under section 552.152 of the Government Code. The city must release the remaining responsive 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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/gw

Ref: ID# 805035

Enc. Submitted documents

c: Requestor
(w/o enclosures)