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ATTORNEY GENERAL OF TEXAS

June 2, 2020

Mr. Robert Carroll
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City of Odessa
P.O. Box 4398
Odessa, Texas 79760-4398

OR2020-15211

Dear Mr. Carroll:

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# 831036 (Ref. No. P002698-031120).

The Odessa Police Department (the "department") received a request for information pertaining to a specified incident, personnel information pertaining to two specified officers, and specified department policies. You state the department has released some information to the requestor. You claim the some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the department has redacted portions of the responsive information. We understand the department has redacted some motor vehicle record information pursuant to section 552.130(c) of the Government Code and a social security number pursuant to section 552.147(b) of the Government Code.² However, the department has also redacted additional information. Pursuant to section 552.301 of the Government Code, a

¹ Although you also raise sections 3(a)(1) and 3(a)(8) of article 6252-17a, we note the 73rd Legislature repealed these provisions effective September 1, 1993. Additionally, based on the substance of your arguments, we understand you to raise section 552.108(b)(1) of the Government Code.

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 from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, the department has been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); *see also* Open Records Decision 673 (2000). As such, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of some of the additional redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling with respect to this information. However, we are unable to discern the nature of the remaining redacted information. Consequently, the department has failed to comply with section 552.301 of the Government Code as to this information, and this information is presumed public under section 552.302 of the Government Code. Accordingly, the department must release this redacted information, which we have marked for release, pursuant to section 552.302 of the Government Code.

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 protected by other statutes such as section 143.089 of the Local Government Code. The application of chapter 143 of the Local Government Code is delineated in section 143.002(a) of that code, which provides:

This chapter applies only to a municipality:

(1) that:

(A) has a population of 10, 000 or more;

(B) has a paid fire department or police department; and

(C) has voted to adopt this chapter or the law codified by this chapter; or

(2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

Local Gov't Code § 143.002(a). Thus, chapter 143 of the Local Government Code applies only to civil service municipalities that have voted to adopt the chapter. Although you generally assert section 143.089(g) for Exhibits D and E, you have not demonstrated the City of Odessa is a civil service municipality to which chapter 143 is applicable. Therefore, the department may not withhold any portion of the information at issue under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal

use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section 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.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, section 552.108(b)(1) is not applicable to generally known policies and procedures. *See* Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). You state release of the information submitted as Exhibits B and C would reveal the department’s “crime prevention techniques[.]” You generally assert release of the information at issue would endanger the public. Upon review, we conclude you have failed to establish release of the information at issue would interfere with law enforcement or prosecution efforts. Therefore, the department may not withhold any portion of the information at issue under section 552.108(b)(1) of the Government Code.

As noted above, we understand the department has redacted some motor vehicle record information pursuant to section 552.130(c) of the Government Code. However, we note the remaining information contains additional motor vehicle record information subject to section 552.130. Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s or driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country. *See* Gov’t Code § 552.130. Upon review, we find the submitted video recordings contain motor vehicle record information subject to section 552.130. You state the department “is unable to . . . redact[.]” such information because the recordings were made on an “older program that is no longer licensed.” Based on this representation, we understand the department lacks the technological capability to redact the confidential information in the video recordings at issue. Accordingly, the department must withhold the submitted video recordings in their entireties under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983). Additionally, the department must withhold the additional motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.101 of the Government Code also encompasses chapter 411 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* 28 C.F.R. § 20.21; *see also* Open Records Decision No. 565 (1990). However, the federal regulations allow each state to follow its individual law with respect to CHRI it generates. *See* ORD 565. Section 411.083 of the Government Code makes CHRI maintained by the Texas Department of Public Safety (“DPS”) confidential, and only allows for the dissemination of this information as provided in subchapters E-1 and F of chapter 411 of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize the dissemination of CHRI to a criminal justice agency, but a criminal justice agency may only release CHRI to another criminal justice agency if it is for a criminal justice purpose. *Id.* § 411.089(b)(1). Certain other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency, but 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 of the Government Code in conjunction with chapter 411. We further note Federal Bureau of Investigation (“FBI”) numbers constitute CHRI generated by the FBI. However, we note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in criminal justice system). We also note driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See id.* § 411.082(2)(B) (definition of CHRI does not include driving record information). Upon review, we find some of the remaining information consists of CHRI that is confidential under section 411.083. Accordingly, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law.

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.”³ *Id.* § 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). Accordingly, the department must withhold the department employees’ dates of birth we marked information under section 552.102(a) of the Government Code.⁴

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

³ 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).

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. This office has also held common-law privacy protects the identity of a juvenile offender. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b). Further, the Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App—Austin May 22, 2015, pet. denied) (mem. op.). However, we note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions 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), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, some of the information at issue contains the identifying information of an individual who may have been a juvenile offender. However, because the information at issue does not reflect the age of this individual, we must rule conditionally. Thus, to the extent the information we marked pertains to an offender ten years of age or older and under seventeen years of age at the time of the alleged conduct, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. Conversely, to the extent the information at issue does not identify an offender who was ten years of age or older and under seventeen years of age at the time of the alleged conduct, the department may not withhold this information on that basis. Regardless, the department must withhold the dates of birth you redacted and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code exempts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). It is unclear whether the department employees at issue are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, to the extent the information we marked pertains to employees that are currently licensed peace officers as defined by article 2.12, the department must withhold such information under section 552.117(a)(2) of the Government Code. However, if the employees whose information is at issue are not currently licensed peace officers, then the information at issue may be subject to section 552.117(a)(1) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). 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). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the department may not withhold the information at issue under section 552.117(a)(1).

In summary, the department must withhold the submitted video recordings in their entireties and the motor vehicle record information we marked under section 552.130 of the Government Code. The department must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law. The department must withhold the department employees' dates of birth we marked information under section 552.102(a) of the Government Code. To the extent the information we marked pertains to an offender ten years of age or older and under seventeen years of age at the time of the alleged conduct, the department must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the dates of birth you redacted and we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we marked pertains to employees that are currently licensed peace officers as defined by article 2.12, the department must withhold such information under section 552.117(a)(2) of the Government Code. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. The department must 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

Mr. Robert Carroll - Page 7

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/rm

Ref: ID# 831036

Enc. Submitted documents

c: Requestor
(w/o enclosures)