



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 8, 2020

Ms. Kelley K. Messer  
First Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2020-25362

Dear Ms. Messer:

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# 847965 (Ref. No. 20-1290).

The City of Abilene (the "city") received a request for information pertaining to a specified investigation. You state the city is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code and certain dates of birth pursuant to Open Records Letter No. 2019-32652 (2019).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must

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<sup>1</sup> 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). Open Records Letter No. 2019-32652 is a previous determination issued to the city authorizing it to withhold certain public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

<sup>2</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 letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You have not explained the information at issue pertains to any specific investigation that concluded in a final result other than a conviction or deferred adjudication. Thus, we conclude you have failed to demonstrate the applicability of section 552.108(a)(2) of the Government Code, and no portion of the submitted information may be withheld on that basis.

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 information at issue identifies undercover police officers. You assert release of their identities would jeopardize their safety and subject the officers to a substantial threat of physical harm. Thus, we find section 552.152 is applicable to the identity of the undercover officers within the information at issue. Accordingly, the city must withhold the identifying information of the undercover officers within the submitted information under section 552.152 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.<sup>3</sup> *Id.* § 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). The remaining information contains information that may be subject to section 552.1175. 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) of the Government Code, the city must withhold such information under section 552.1175 of the Government Code. However, 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), then the information we marked may not be withheld under section 552.1175 of the Government Code.

In summary, the city must withhold the identifying information of the undercover officers within the submitted information under section 552.152 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) of the Government Code, the city must withhold such information under section 552.1175 of the Government Code. The city must release the remaining information.

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<sup>3</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).

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/jm

Ref: ID# 847965

Enc. Submitted documents

c: Requestor  
(w/o enclosures)