



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 6, 2022

Mr. James Kopp  
Assistant City Attorney  
City of San Antonio  
315 South Santa Rosa, 6th Floor  
San Antonio, Texas 78207

OR2022-10035

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# 939636 (COSA File No. W4757).

The City of San Antonio (the "city") received a request for the personnel file of a named peace officer.<sup>1</sup> You claim some of the submitted information is not subject to the Act. You also claim some of the submitted information was not properly requested pursuant to section 1701.661 of the Occupations Code. You further claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered your submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> The city provides documentation showing it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<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.

Initially, we note some of the submitted information, which we marked, is not responsive to the instant request for information because it was created after the city received the clarified request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983). 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.

You argue the information you marked is not subject to the Act. The Act is only applicable to “public information.” *See* Gov’t Code § 552.021. Section 552.002(a) 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.

*Id.* § 552.002(a). You explain the submitted MDT messages contain purely personal exchanges that have no connection with the transaction of official business of the city. *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Upon review of the marked information, we agree the information does not constitute “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the city. *See* Gov’t Code § 552.021. Thus, we conclude the information you marked is not subject to the Act and need not be released in response to this request.

Next, we note the remaining information contains peace officers’ Texas Commission on Law Enforcement (“TCOLE”) identification numbers. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes,

documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. 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. Accordingly, we find the officers' TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestor.<sup>3</sup>

Next, we note the remaining information includes a police officer's body worn camera recording. 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 provides, in relevant part, the following:

(a) 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 recording at issue was not properly requested pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released.<sup>4</sup> 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 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 protected by other statutes. As part of the Texas Homeland Security Act (the "HSA"), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.176 provides, in relevant part:

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<sup>3</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

<sup>4</sup> As we are able to make this determination, we need not address your arguments against disclosure of this information.

(a) 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; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1)-(2). 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* Open Records Decision No. 649 at 3 (1996) (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).

The city informs us some of the remaining information consists of automatic vehicle location ("AVL") records. The city states the AVL records are "collected, assembled, and maintained by the [city's police department (the "department")] for the purpose of preventing, responding to, or investigating acts of terrorism or related criminal activity." The city further states the AVL records "ensure that the location of department officers is known at all times by the department through tracking of marked patrol units." The city states the records "reflect patterns of officer deployment and varying methods of response and associated response times in real-time."

Upon review, we find the city has demonstrated the submitted AVL records relate to its staffing requirements and tactical plan and are maintained by the city for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Therefore, the city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also encompasses information protected by section 143.089 of the Local Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). Under section 143.089(a), the officer's civil service file must

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

contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143. *See* Attorney General Opinion JC-0257 (2000). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.).

All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or are in the possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

*Id.* In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined section 143.089(g) made these records confidential. *See* 851 S.W.2d at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code

§ 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (addressing functions of Local Gov’t Code § 143.089(a) and (g) files).

You state the remaining information is contained within internal files of the city’s police department pursuant to section 143.089(g). Based on your representations and our review, we conclude the city must withhold some 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. However, we note some of the information at issue consists of information pertaining to misconduct by the named city police officer that resulted in disciplinary actions against the officer. While this information may be kept in the internal file maintained under section 143.089(g), it must also be kept in the civil service personnel file maintained under section 143.089(a). *See* Local Gov’t Code § 143.089(a)(2). In this instance, the request was received by the city, which has access to the files maintained under both sections 143.089(a) and 143.089(g). Therefore, the request encompasses both of these files. Accordingly, the city may not withhold the periodic evaluations or commendations at issue maintained in the section 143.089(a) file under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. Therefore, with the exception of the information we marked for release, the city must withhold the remaining responsive information you indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.<sup>6</sup>

We note the remaining responsive information at issue contains a CR-3 accident report. Section 552.101 of the Government Code also encompasses information subject to 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. *See* 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). Thus, the submitted accident report is confidential under section 550.065(b) of the Transportation Code, and the city must withhold it under section 552.101 of the Government Code in its entirety.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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.). Thus, the city

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

must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

The city raises section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988)*. However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *Open Records Decision No. 549 at 5 (1990)*. We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. *See ORD 208 at 1-2*.

You state portions of the remaining responsive information identify complainants who reported violations of law to the city's police department. Based upon the city's representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to some of the information at issue, which we marked. Therefore, the city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate the remaining responsive information identifies a complainant for purposes of the informer's privilege. Thus, the city may not withhold any of the remaining responsive information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides, "[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by sections 730.005-730.007, 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, address but not zip code, telephone number, or medical and disability information. *Id.* § 730.003(6). The Texas 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). Although you generally claim some of the submitted information was obtained by the city from DPS, we find you have not demonstrated any portion of the remaining responsive information consists of personal information that was obtained by the city from DPS. *See id.* § 730.007(a)(2)(A)(i) (personal information may be disclosed to government agency in

carrying out its functions). Accordingly, you have not demonstrated any of the remaining responsive information is confidential under section 730.004 or 730.013 of the Transportation Code and the city may not withhold the remaining responsive information under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.<sup>7</sup> *See* Gov't Code § 552.130(a). Accordingly, the city must withhold the motor vehicle record information you marked and we marked under section 552.130 of the Government Code.

In summary, the information you marked is not subject to the Act and need not be released in response to this request. The TCOLE identification numbers are not subject to the Act and need not be released to the requestor. The submitted body worn camera recording was not properly requested pursuant to chapter 1701 of the Occupations Code and it need not be released. The city must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. With the exception of the information we marked for release, the city must withhold the remaining responsive information you indicated under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the CR-3 in its entirety under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The city must withhold the public citizens' dates of birth we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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 release the remaining responsive information.<sup>8</sup>

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

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<sup>7</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).

<sup>8</sup> We note the information being released contains a social security number. 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* Gov't Code § 552.147(b).

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,

Pearlie Gault  
Attorney  
Open Records Division

PG/jm

Ref: ID# 939636

Enc. Submitted documents

c: Requestor  
(w/o enclosures)