

# **OFFENSE AND CALL FOR SERVICE REPORTS, INVESTIGATION FILES, AND RESPONSE RECORDS**

## **PROCEDURAL AND RELEASE PROVISIONS OF THE ACT:** **SECTION 552.301**

- ▶ Prescribes the procedures and deadlines for asking the OAG for a ruling on whether information is excepted from disclosure.

### **WHAT TO REMEMBER ABOUT SECTION 552.301:**

- Within 10 business days of the date of your receipt of the request for information, you must:
  - (1) send the OAG a written request for a ruling, stating every exception you believe may be applicable; AND
  - (2) send the requestor: (a) a written statement that you wish to withhold information and have asked the OAG for a ruling and (b) a copy of your communication with the OAG.
- Within 15 business days of the date of your receipt of the request, you must:
  - (1) send the OAG: (a) written comments in support of each exception you claim; (b) a copy of the request for information; (c) a signed statement of the date of your receipt of the request or evidence sufficient to establish the date; and (d) a copy of the requested information, or representative samples if the information is voluminous, labeled to indicate which exceptions apply to which part of the information; AND
  - (2) send the requestor a copy of your written comments (which you may redact to avoid disclosure of the information at issue).

## **SECTION 552.302**

- ▶ Prescribes consequences of failure to comply with section 552.301.

## **WHAT TO REMEMBER ABOUT SECTION 552.302:**

- If you fail to comply with section 552.301, the requested information is presumed to be subject to required public disclosure, and the information must be released, unless there is a compelling reason to withhold the information.

## **SECTION 552.022**

- ▶ Provides for required public disclosure of 18 categories of information.

## **WHAT TO REMEMBER ABOUT SECTION 552.022:**

- Information encompassed by section 552.022 may generally not be withheld from disclosure unless the information is made confidential under the Act or other law.
- ✓ NOTE: Court-filed documents, which are subject to section 552.022(a)(17), are the most common information subject to section 552.022 found in law enforcement records.

## **SECTION 552.108**

### **INFORMATION PROTECTED:**

- ▶ Records of a law enforcement agency or prosecutor.
- ✓ NOTE: Section 552.108 is a discretionary exception.
  - A governmental body chooses whether to withhold information under this exception.
  - It is the governmental body's burden to demonstrate section 552.108 applies to the submitted information.
  - A governmental body waives its section 552.108 interest by violating section 552.301.
- ✓ NOTE 2: The need of another law enforcement agency, other than the one that violated section 552.301, can provide a compelling reason to withhold information under section 552.108.

- A governmental body must provide the OAG with a representation that the release of the requested information would interfere with the other law enforcement agency's section 552.108 interest.
- ✓ NOTE 3: Information subject to release under subsections 552.022(a)(2) through 552.022(a)(18) may not be withheld under section 552.108 because section 552.108 does not make information confidential under the Act.
- Section 552.022(a)(1) specifically states completed reports, audits, evaluations, and investigations made of, for, or by a governmental body subject to release under section 552.022(a)(1) may be withheld under section 552.108.

**SECTION 552.108(a)(1)**

**INFORMATION PROTECTED:**

- ▶ Information that deals with the detection, investigation, or prosecution of crime if its release would interfere with the detection, investigation, or prosecution of crime.
- ✓ NOTE: Section 552.108(a)(1) applies to information relating to a particular criminal investigation that is pending on the date the governmental body receives a request for information.
- ✓ NOTE 2: If the information is an internal affairs investigation the governmental body needs to specifically explain how the information is related to the pending criminal investigation or prosecution.
- ✓ NOTE 3: Section 552.108(a)(1) may be raised by an entity that is not a law enforcement agency or prosecutor when the agency is the proper custodian of information. The proper custodian of information must:
  - (1) Demonstrate the information relates to a pending case of a law enforcement agency; and
  - (2) Provide a representation from the law enforcement agency that it wishes to have the information withheld.
- ✓ NOTE 4: Citations, Statutory Warnings, and Notices of Suspension are generally not withheld under section 552.108(a)(1).

**WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 552.108(a)(1):**

- The submitted information is related to a pending criminal investigation or prosecution.
- Explain how the submitted information is related to the pending criminal investigation or prosecution.
- ✓ NOTE: If information directly relates to a pending criminal investigation or prosecution, then it is presumed release of the directly related information will interfere with law enforcement or prosecution.
  - Information directly related includes: the offense report, evidence, 9-1-1 transcripts, dash camera videos, etc.
- ✓ NOTE 2: If the information is an internal affairs investigation, you need to specifically explain how the information is related to the pending criminal investigation or prosecution.

**SECTION 552.108(a)(2)**

**INFORMATION PROTECTED:**

- ▶ Information that deals with the detection, investigation, or prosecution of crime if it relates to an investigation that did not result in conviction or deferred adjudication.
  - ✓ NOTE: Section 552.108(a)(2) applies to investigations that ended in final results other than convictions or deferred adjudications before the governmental body receives the request for information.
  - ✓ NOTE 2: Examples:
    - Dismissal.
    - No billed by the grand jury.
    - Prosecutor declines charges.
    - Acquittal.
    - Statute of limitations has run and defendant was never prosecuted.

**WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 552.108(a)(2):**

- The submitted information is related to a closed criminal investigation or prosecution.
- The criminal investigation or prosecution ended in a result other than

conviction or deferred adjudication.

### **SECTION 552.108(b)(1)**

#### **INFORMATION PROTECTED:**

- ▶ Internal records or notations maintained for internal use in matters relating to law enforcement or prosecution if release will interfere with law enforcement or prosecution.
  - ✓ NOTE: Section 552.108(b)(1) applies to internal records generally used in law enforcement.
  - ✓ NOTE 2: Section 552.108(b)(1) may apply to use of force guidelines, policy and procedure manuals, list of cellular telephone numbers assigned to peace officers, etc.

#### **WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 552.108(b)(1):**

- The submitted information consists of internal records or notations maintained for internal use for law enforcement or prosecution.
- Detailed explanation of how release of the submitted information will interfere with law enforcement or prosecution.

### **SECTION 552.108(b)(2)**

#### **INFORMATION PROTECTED:**

- ▶ Internal records or notations maintained for internal use in matters relating to law enforcement or prosecution if the information relates to an investigation that did not result in conviction or deferred adjudication.

### **SECTION 552.108(c)**

- ▶ Basic information relating to an arrested person, arrest, or a crime is not excepted from disclosure under section 552.108.
  - ✓ NOTE: Basic information is the 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).

- ✓ NOTE 2: Pursuant to Open Records Decision No. 127 (1976), basic information includes:
  - The arrestee’s name, age, address, race, sex, occupation, alias, social security number, police department identification number, and physical condition.
  - The date, time, and place of arrest.
  - The offense charged and the court in which the charge is filed.
  - Details of the arrest.
  - Booking information.
  - A notation of any release or transfer.
  - Bonding information.
  - The location of the crime.
  - The identification and description of the complainant.
  - The premises involved.
  - The time of occurrence.
  - The property involved.
  - The vehicle involved.
  - A description of the weather.
  - A detailed description of the offense.
  - The names of the arresting and investigating officers.
  
- ✓ NOTE 3: Basic information does not include motor vehicle record information or victim and witness information, if the victim or witness is not the complainant.
  
- ✓ NOTE 4: Basic information is frequently referred to as “media” or “front page” information, but it can be located throughout offense reports or in other law enforcement records such as arrest reports, computer aided dispatch reports, and blotters.
  
- ✓ NOTE 5: Basic information is not released from photographs, dash camera video recordings, or 9-1-1 audio recordings.
  
- ✓ NOTE 6: Although basic information cannot be withheld under section 552.108, other exceptions may apply to basic information.

**WHAT TO REMEMBER ABOUT SECTION 552.108:**

- You have the discretion to raise section 552.108 for the requested information.
  
- You cannot withhold information under section 552.108 without requesting a ruling.

- It is your burden to explain how section 552.108 applies to the requested information.
- You waive your section 552.108 interest by violating section 552.301.
- ✓ NOTE: The need of another law enforcement agency can provide a compelling reason to withhold information under section 552.108.
- Raise section 552.108(a)(1) for information relating to a particular **pending** criminal investigation or prosecution.
- Raise section 552.108(a)(2) for information relating to a **closed** criminal investigation or prosecution that **did not** result in conviction or deferred adjudication.
- Raise section 552.108(b)(1) for internal records generally used in law enforcement.
- Basic information may not be withheld under section 552.108.

### **SECTION 552.101**

#### **INFORMATION PROTECTED:**

- ▶ Information that is made confidential by **law outside of the Act**, including constitutional, statutory, and judicial decisions.
  - ✓ NOTE: Section 552.101 must be raised in conjunction with another law outside the Act.
  - ✓ NOTE 2: Section 552.101 should not be raised in conjunction with one of the numbered exceptions to disclosure in the Act.

### **SECTION 58.007(c) OF THE FAMILY CODE**

#### **INFORMATION PROTECTED:**

- ▶ Law enforcement records of a child relating to delinquent conduct or conduct indicating a need for supervision that **occurred on or after September 1, 1997**.
  - ✓ NOTE: Section 58.007(c) applies to a child between the ages of ten and sixteen at the time of the conduct.

- Defined in section 51.02 of the Family Code.
- ✓ NOTE 2: Section 58.007(c) is only applicable if the child is a suspect or offender in the requested information.
  - Section 58.007(c) does not apply to a law enforcement record where the child is only a victim, witness, or other involved party.
- ✓ NOTE 3: Examples of delinquent conduct include:
  - Conduct, other than a traffic offense, that violates a penal law of Texas or the United States punishable by imprisonment or confinement in jail.
  - Certain alcohol related offenses.
- ✓ NOTE 4: Examples of conduct indicating a need for supervision include:
  - Conduct, other than traffic offenses, that violates the penal laws of Texas punishable by fine only or the penal ordinances of a political subdivision of Texas.
  - Running away.
- ✓ NOTE 5: The terms “delinquent conduct” and “conduct indicating a need for supervision” are defined in section 51.03 of the Family Code.
- ✓ NOTE 6: If the law enforcement record is confidential under section 58.007(c), then the information is generally withheld in its entirety.
- ✓ NOTE 7: Section 58.007(c) is raised in conjunction with section 552.101.

**SECTION 58.007(e) OF THE FAMILY CODE**

- ▶ Information may not be withheld under section 58.007(c) when the requestor is a juvenile justice agency, a criminal justice agency, the child, or the child’s parent or guardian.

**SECTION 58.007(j) OF THE FAMILY CODE**

- ▶ When information subject to section 58.007(c) is requested by the child, or the child’s parent or guardian, the governmental body:
  - (1) must withhold personally identifying information of other juvenile suspects,

offenders, victims, or witnesses who are not the child; and

(2) may raise other exceptions to disclosure.

- ✓ NOTE: If the requestor is the child or the child's parent or guardian, the governmental body must request a decision from the OAG to withhold (1) the identifying information of other juvenile suspects, offenders, victims, or witnesses and/or (2) information that is excepted from disclosure under the Act or other law.
- ✓ NOTE 2: Juvenile victims and witnesses for the purposes of section 58.007(j)(1) are individuals who are under the age of eighteen at the time of the conduct.

**WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 58.007:**

- The submitted information consists of law enforcement records that relate to an identified child suspect or offender who was between the ages of ten and sixteen at the time the conduct occurred.
- ✓ NOTE: If the age of the child is not contained in the information submitted to the OAG, you must give the age of the child in your briefing.
- The conduct at issue in the submitted information consists of delinquent conduct or conduct indicating a need for supervision.
- The submitted information relates to conduct that occurred on or after September 1, 1997.
- Whether the requestor is a juvenile justice agency, a criminal justice agency, the child, or the child's parent or guardian, and thus, section 58.007(e) applies.
- If section 58.007(e) applies, explain whether you seek to withhold the information under another provision of law, such as section 552.108 of the Government Code.

**SECTION 51.14 OF THE FAMILY CODE**

**INFORMATION PROTECTED:**

- ▶ Law enforcement records of a child relating to delinquent conduct or conduct indicating a need for supervision that **occurred before January 1, 1996.**

- ✓ NOTE: Section 51.14 was repealed by the Seventy-fourth Legislature, but was continued in effect for the purpose of law enforcement records of a child pertaining to conduct occurring before January 1, 1996.
- ✓ NOTE 2: Like section 58.007, child is defined as a person between the ages of ten and sixteen at the time of the conduct.
- ✓ NOTE 3: Section 51.14 also applies to records that relate to a child suspect or offender.
- ✓ NOTE 4: Section 51.14 does not have a provision similar to section 58.007(e) that specifies the child's law enforcement records may not be withheld from the child, parent, or guardian.
- ✓ NOTE 5: The Legislature chose not to make section 58.007 retroactive. Therefore, if the delinquent conduct or conduct indicating a need for supervision of a child occurred between January 1, 1996, and September 1, 1997, the records are not excepted from disclosure under either former section 51.14 or section 58.007.
  - Other exceptions to disclosure may apply to law enforcement records of a child between January 1, 1996, and September 1, 1997.
- ✓ NOTE 6: Section 51.14 is raised in conjunction with section 552.101.

**SECTION 261.201(a) OF THE FAMILY CODE**

**INFORMATION PROTECTED:**

- ▶ Reports of abuse or neglect of a child, the identity of the person making the report of abuse or neglect of a child, and information used or developed in an investigation of abuse or neglect of a child.
  - ✓ NOTE: Records used or developed in a child abuse or neglect investigation may be withheld only if the investigation was conducted by an agency authorized to conduct such an investigation.
  - ✓ NOTE 2: Section 261.201 applies to records involving a child victim who was under the age of eighteen at the time of the alleged abuse or neglect.
  - ✓ NOTE 3: Examples of abuse include:

- Mental or emotional injury that results in material impairment.
  - Physical injury that results in substantial harm or the genuine threat of physical harm.
  - Sexual conduct harmful to the child’s mental, emotional, or physical welfare.
  - Causing, permitting, or encouraging a child to use a controlled substance.
- ✓ NOTE 4: Examples of neglect include:
- Leaving a child in a situation where the child is exposed to a substantial threat of physical harm without arranging for the necessary care and a demonstration of an intent not to return.
  - Failing to seek, obtain, or follow through with medical care with the failure presenting a substantial risk of injury or material impairment.
  - Failure to provide the child with food, clothing, or shelter necessary to sustain life or health.
- ✓ NOTE 5: Terms “abuse” and “neglect” are defined in section 261.001 of the Family Code.
- ✓ NOTE 6: If information is confidential under section 261.201(a), the information is generally withheld in its entirety.
- ✓ NOTE 7: Section 261.201 is raised in conjunction with section 552.101.
- ✓ NOTE 8: Section 261.201 does not apply to an investigation of child abuse or neglect in a home or facility regulated under chapter 42 of the Human Resources Code.
- This includes licensed day care facilities.

**SECTION 261.201(k) OF THE FAMILY CODE**

- ▶ Information may not be withheld under section 261.201(a) by an investigating agency when the information is requested by a parent, managing conservator, or other legal representative of the child who is the subject of the report or the child if the child is at least eighteen years of age.
- ✓ NOTE: Information may not be released under section 261.201(k) if the parent, managing conservator, or other legal representative of the child is alleged to have committed the abuse or neglect.

## **SECTION 261.201(I) OF THE FAMILY CODE**

- ▶ When information subject to section 261.201(a) is requested by a parent, managing conservator, or other legal representative of the child who is not alleged to have committed the abuse, or the child if the child is at least eighteen years of age, the governmental body:

(1) must withhold any personally identifiable information about a victim or witness who is under eighteen and not the subject of the report or another child of the parent, managing conservator, or other legal representative;

(2) may raise other exceptions to disclosure; and

(3) must withhold the identity of the person who made the report.

## **WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 261.201:**

- Explain whether the requested information consists of a report of or was used in a child abuse or neglect investigation or contains the identity of an individual who made a report of child abuse or neglect.
- Identify the authorized entity that conducted the child abuse or neglect investigation.
- The age of the child victim.
- ✓ NOTE: If it is not clear from the face of the documents, inform our office of the age of the alleged victim.
- Whether the requestor is the parent of the child victim who is not alleged to have committed the abuse or neglect, the managing conservator or legal representative of the child, or the child victim who is now at least eighteen years of age, and thus, section 261.201(k) applies.
- If section 261.201(k) applies, explain whether you seek to withhold the information under another provision of law, such as section 552.108 of the Government Code.

## **COMMON-LAW PRIVACY INFORMATION PROTECTED:**

- ▶ Information that (1) contains highly intimate or embarrassing facts, which if publicized would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public.
  - ✓ NOTE: Information must meet both prongs of this test to be withheld.
  - ✓ NOTE 2: Information contained in offense reports that is subject to common-law privacy includes:
    - A compilation of an individual’s criminal history.
    - Information relating to a sexual assault victim.
    - Information concerning an attempted suicide.
  - ✓ NOTE 3: Common-law privacy is raised in conjunction with section 552.101.
  - ✓ NOTE 4: Pursuant to section 552.023, an individual or the individual’s authorized representative has a right of access to records that implicate the individual’s privacy interests.
  - ✓ NOTE 5: An individual’s right to privacy lapses at death.
  - ✓ NOTE 6: The Third Court of Appeals concluded public citizens’ dates of birth are protected by common-law privacy. *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.).

**CRIMINAL HISTORY COMPILATION**

**INFORMATION PROTECTED:**

- ▶ A compilation or summary of an individual’s criminal history when created by a governmental body.
  - ✓ NOTE: A compilation of criminal history includes:
    - A note in an offense report stating the governmental body’s database reveals an individual was previously convicted of a specified crime.
    - Offense reports depicting an individual as a suspect, arrestee, or criminal defendant when the requestor seeks unspecified records pertaining to that named individual.

- ✓ NOTE 2: A request for specified records or records pertaining to a specified address does not implicate an individual's right to privacy.
- ✓ NOTE 3: A compilation of criminal history does not include records involving an individual as a complainant, victim, or witness.
- ✓ NOTE 4: Warrant information is not part of a compilation of criminal history because it involves an individual's current involvement in the criminal justice system.
- ✓ NOTE 5: Driving record information is not included in the definition of criminal history.

## **SEXUAL ASSAULT**

### **INFORMATION PROTECTED:**

- ▶ If the requestor knows the identity of the sexual assault victim, the entirety of the offense report must be withheld.
- ▶ If the requestor does not know the identity of the sexual assault victim, the identifying information of the sexual assault victim must be withheld.
- ✓ NOTE: The identity of a sexual assault victim must be withheld when releasing basic information pursuant to section 552.108(c).
  - For example, if the sexual assault victim is also the complainant, then the sexual assault victim's identity is not released.

## **ATTEMPTED SUICIDE**

### **INFORMATION PROTECTED:**

- ▶ If the requestor knows the identity of the individual who attempted suicide **AND** knows the individual attempted suicide, the entirety of the offense report must be withheld.
- ▶ If the requestor does not know the identity of the individual that attempted suicide **OR** does not know the individual attempted suicide, only those portions of the information revealing the individual attempted suicide must be withheld.
- ✓ NOTE: References to an attempted suicide must be withheld when releasing basic information pursuant to section 552.108(c).

- For example, a detailed description of the offense may contain references to an attempted suicide.

**SECTION 552.108(a)(4) OF THE GOVERNMENT CODE**

**INFORMATION PROTECTED:**

- ▶ Information that deals with the detection, investigation, or prosecution of crime if the information is prepared by or reflects the mental impressions or legal reasoning of an attorney representing the state in anticipation of criminal litigation or for criminal litigation.

✓ NOTE: Examples of information withheld under section 552.108(a)(4):

- Witness interview notes.
- Jury observations/voir dire preparations.
- Investigation/case summaries.
- Legal research.

✓ NOTE 2: Pursuant to *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), a district attorney's entire litigation file may be withheld under section 552.108(a)(4) if the request is for the entire litigation file.

- *Curry v. Walker* determined the decision of what to include in the district attorney's file necessarily reveals the district attorney's mental impressions or legal reasoning.

✓ NOTE 3: Pursuant to section 552.108(c), basic information may not be withheld under section 552.108(a)(4).

✓ NOTE 4: A governmental body waives section 552.108(a)(4) by failing to comply with section 552.301.

✓ NOTE 5: Information subject to release under section 552.022(a)(1) may be withheld under section 552.108(a)(4).

✓ NOTE 6: The burden is on a governmental body to demonstrate section 552.108(a)(4) applies to the submitted information.

**WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 552.108(a)(4):**

- Whether the information was prepared by or reflects the mental impressions or legal reasoning of an attorney representing the state.

- Whether the information was created in anticipation of criminal litigation of for criminal litigation.

**SECTION 550.065(b) OF THE TRANSPORTATION CODE**  
**INFORMATION PROTECTED:**

- ▶ An accident report that is completed pursuant to section 550.061, section 550.062, or section 601.004 of the Transportation Code or accident report information compiled under section 201.806 of the Transportation Code.
  - ✓ NOTE: Types of accident reports include:
    - CR-3
    - CRB-3
    - ST-3
  - ✓ NOTE 2: Pursuant to section 550.065(c)(4), an accident report must be released in its entirety to a requestor who is directly concerned in the accident or has a proper interest in the accident, including twelve types of people listed in subsections 550.065(c)(4)(A)-(L). The twelve types of people include:
    - Any person involved in the accident or his/her authorized representative
    - Owner of a vehicle or property damaged in the accident.
    - Insurance company that issued a policy covering any person involved
    - Radio or television station
    - A newspaper that is free, published once a week, and available to the general public
    - Any person who may sue because of death resulting from the accident
  - ✓ NOTE 3: Pursuant to section 550.065(c-1), a redacted report must be created and produced to any requestor.
  - ✓ NOTE 4: Section 550.065(f) lists items that must be redacted from an accident report released pursuant to section 550.065(c-1), and includes:
    - Name, address, other than zip code, and telephone number of any person listed in the report

- Driver's license numbers and license plate numbers
- Dates of birth, other than year
- Insurance policy numbers and insurance company names
- Badge number or identification number of the investigating officer

**WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 550.065:**

- Whether the accident report was completed pursuant to section 550.061, section 550.062, or section 601.004 of the Transportation Code.
- Whether the requestor is directly concerned in the accident or has a proper interest in the accident and is one of the twelve types of people listed in subsections 550.065(c)(4)(A)-(L).

**ARTICLE 2.139 OF THE CODE OF CRIMINAL PROCEDURE**

- ▶ Article 2.139 provides a person who is stopped or arrested on suspicion of certain specified intoxication offenses with a right of access to video recordings pertaining to the stop or arrest.
  - ✓ NOTE: Specified intoxication offenses include:
    - Driving while intoxicated
    - Driving while intoxicated with child passenger
    - Intoxication assault
    - Intoxication manslaughter
  - ✓ NOTE 2: The video recording must have been made by or at the direction of the peace officer who made the stop or arrest.
  - ✓ NOTE 3: The video recording must contain footage of *any* of the following:
    - Stop
    - Arrest
    - Conduct of person stopped during any interaction with the officer, including a field sobriety test
    - Procedure in which a specimen of the person's breath or blood is taken
  - ✓ Note 4: Does not apply to a video held by a prosecutor.

**SECTIONS 772.118, 772.218, AND 772.318 OF THE HEALTH & SAFETY CODE**  
**INFORMATION PROTECTED:**

- ▶ Originating telephone numbers and addresses of 9-1-1 callers furnished by a 9-1-1 service supplier.
- ✓ NOTE: The applicability of these sections depends on the population size of the county in which the emergency communication district is located.
  - Section 772.118 applies to an emergency communication district for a county with a population of more than two million.
  - Section 772.218 applies to an emergency communication district for a county with a population of more than 860,000.
  - Section 772.318 applies to an emergency communication district for a county with a population of more than 20,000.
- ✓ NOTE 2: Sections 772.118, 772.218, and 772.318 do not apply to information a 9-1-1 caller provides.

**WHAT YOU NEED TO TELL US WHEN ASSERTING SECTIONS 772.118, 772.218, AND 772.318:**

- Whether your governmental body is part of an emergency communication district established under one of these sections.
- Whether the information contains the originating telephone number or address of a 9-1-1 caller.
- Whether the telephone number or address was provided by a 9-1-1 service supplier.

**CHAPTER 411 OF THE GOVERNMENT CODE**  
**INFORMATION PROTECTED:**

- ▶ Criminal history record information obtained from the federal National Crime Information Center (“NCIC”) and the Texas Crime Information Center (“TCIC”).

- ✓ NOTE: Examples of criminal history record information:
  - Department of Public Safety computerized criminal history printout
  - FBI numbers
  - An indication of “No record” from NCIC
  
- ✓ NOTE 2: Criminal history record information does not encompass driving record information.
  - License plate checks are not withheld as criminal history record information.
  
- ✓ NOTE 3: Information pertaining to an individual’s current involvement in the criminal justice system is not criminal history record information.
  - Warrant information is not withheld as criminal history record information.

**SECTION 159.002 OF THE OCCUPATIONS CODE**

**INFORMATION PROTECTED:**

- ▶ A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient.
  
- ▶ A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician.
  
- ✓ NOTE: Section 159.002 is part of the Medical Practice Act, subtitle B of title 3 of the Occupations Code.
  
- ✓ NOTE 2: Section 159.002 excepts records created by a physician or someone under the supervision of a physician.
  
- ✓ NOTE 3: Section 159.002 excepts both medical records and information obtained from those medical records.
  
- ✓ NOTE 4: When a file is created because of a hospital stay, all documents in a file referring to the diagnosis or treatment are subject to section 159.002.

**SECTION 611.002 OF THE HEALTH AND SAFETY CODE**

## **INFORMATION PROTECTED:**

- ▶ Communications between a patient and a professional and records of the identity, diagnosis or treatment of a patient created or maintained by a professional.
  - ✓ NOTE: Section 611.002 applies to mental health records.
  - ✓ NOTE 2: Professional is defined as: (1) a person authorized to practice medicine; (2) a person licensed or certified by Texas to diagnose, evaluate, or treat any mental or emotional condition or disorder; or (3) a person the patient reasonably believes is authorized, licensed, or certified.

## **SECTION 773.091 OF THE HEALTH AND SAFETY CODE**

### **INFORMATION PROTECTED:**

- ▶ A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient.
- ▶ Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider.
  - ✓ NOTE: Pursuant to section 773.091(g), information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services is not confidential under section 773.091.

## **ARTICLE 49.25, SECTION 11 OF THE CODE OF CRIMINAL PROCEDURE**

### **INFORMATION PROTECTED:**

- ▶ Photographs and x-rays of a body taken during an autopsy.
  - ✓ NOTE: Autopsy photographs and x-rays of a body are protected and may be withheld without first seeking a decision from the OAG.
  - ✓ NOTE 2: Does not affect required disclosure of such photographs or x-rays sought under subpoena or authority of other law, or if the autopsy is of a person who dies while in custody of law enforcement.

- ✓ NOTE 3: Does not cover photographs of a body taken at a crime scene or hospital.

**SECTION 552.1085 OF THE GOVERNMENT CODE**  
**INFORMATION PROTECTED:**

- ▶ Sensitive crime scene images.
  - ✓ NOTE: Applies only to closed criminal cases.
  - ✓ NOTE 2: Sensitive crime scene image is defined as photographs or videos taken at a crime scene that depict a deceased person in a state of dismemberment, decapitation, or similar mutilation, or that depict the deceased's genitalia.
  - ✓ NOTE 3: Next of kin must be notified of request.
  - ✓ NOTE 4: Images may be released to certain requestors, including next of kin, the media, and researchers.

**IDENTITY THEFT**

**ARTICLE 2.29 OF THE CODE OF CRIMINAL PROCEDURE AND SECTION 32.51 OF THE PENAL CODE**

- ▶ Section 32.51(b) provides “[a] person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of . . . identifying information of another person without the other person’s consent[.]”
  - ✓ NOTE: Identifying information under section 32.51(a) includes:
    - Name and date of birth
    - Unique biometric data, including fingerprint, voice print, or retina or iris image
    - Unique electronic identification number, address, routing code, or financial institution account number
    - Telecommunication identifying information or access device
    - Social security number or other government-issued identification number
  - ✓ NOTE 2: Identity theft offenses include:

- Forgery
  - Check fraud
  - Unauthorized use of identifying information
  - Fraudulent use of identifying information
  - Credit card/debit card abuse
- ▶ Pursuant to article 2.29, a governmental body shall provide to a victim of an alleged section 32.51 violation, a report containing the name of the victim, the name of the suspect, the type of identifying information obtained, possessed, transferred, or used, and the results of any investigation unless the information is confidential.
- ✓ NOTE: Article 2.29 applies if the violation of section 32.51(b) occurred **on or after September 1, 2005.**
  - ✓ NOTE 2: Only confidential information may be withheld from an offense report that is subject to release pursuant to article 2.29.

### **WHAT TO CONSIDER FOR IDENTITY THEFT:**

- Whether the report pertains to a violation of section 32.51 that occurred on or after September 1, 2005.
- Whether the requestor is the victim of the alleged offense.
- If the requestor is the victim of an alleged section 32.51 offense, whether any portion of the information is confidential.
  - Section 552.108 does not make information confidential.

### **INFORMER'S PRIVILEGE** **INFORMATION PROTECTED:**

- ▶ 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.
- ✓ NOTE: The report must be of a violation of a criminal or civil statute.
  - ✓ NOTE 2: The informer's privilege protects not only the informer's identity, but also any portion of the informer's statement that might tend to reveal the informer's identity.

- ✓ NOTE 3: The informer's privilege does not apply when the subject of the information knows the informer's identity.
- ✓ NOTE 4: Individuals who provide information during the course of an investigation, but do not report the violation of law are not informants for purposes of the informer's privilege.
- ✓ NOTE 5: The informer's privilege is raised in conjunction with section 552.101.
- ✓ NOTE 6: A governmental body waives the informer's privilege by failing to comply with section 552.301 of the Government Code.
  - The informer's privilege protects the interests of a governmental body, not a third party, including the informer.

**WHAT YOU NEED TO TELL US WHEN ASSERTING THE INFORMER'S PRIVILEGE:**

- The individual at issue reported a violation of law to the police or an administrative official with a duty of inspection or law enforcement.
- Identify the alleged violation of law.
- Inform us the alleged violation of law is punishable by civil or criminal penalties.
- Inform us the subject of the complaint does not know the identity of the informer.

**SECTION 552.152 OF THE GOVERNMENT CODE**

**INFORMATION PROTECTED:**

- ▶ Information that would subject an **employee or officer** to a substantial threat of physical harm.
  - ✓ NOTE: A governmental body must demonstrate how release of the information at issue would subject the employee or officer to a substantial threat of physical harm.
    - A general assertion that release could endanger an employee or officer will not meet this burden.

**WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 552.152:**

- Specifically explain how release of the information at issue would subject the employee or officer to a substantial threat of physical harm.

**BODY WORN CAMERA RECORDINGS**  
**SECTION 1701.661 OF THE OCCUPATIONS CODE**

- ▶ Provides procedures for requesting and releasing information recorded by a body worn camera. If the requestor does not follow the required procedures for requesting a body worn camera recording, it need not be released in response to a request for information.
  - ✓ NOTE: A requestor must provide four pieces of information when requesting body worn camera footage from a law enforcement agency:
    - Date of the recording
    - Approximate time of the recording
    - Specific Location where recording occurred
    - Name of one or more persons known to be a subject of the recording
  - ✓ NOTE 2: A requestor may submit a subsequent request for the body worn camera recording if the first request does not contain the four pieces of required information.
- ▶ If a body worn camera recording relates to a law enforcement purpose and is properly requested, you generally may assert any applicable exception to disclosure under the Act or other law.
  - ✓ NOTE 1: If the body worn camera recording was not required to be made under subchapter N of chapter 1701 of the Occupations Code, another law, or a law enforcement agency's police AND does not relate to a law enforcement purpose (for example, it is purely personal in nature), the recording is confidential pursuant to section 1701.661(h).
  - ✓ NOTE 2: Any recording that documents the use of deadly force or is related to an administrative or criminal investigation of an officer may not be released until all criminal matters are finally adjudicated and all administrative investigations completed.
    - A law enforcement agency may release such information if it determines release furthers a law enforcement interest.

- ✓ NOTE 3: You may not release any portion of a recording made in a private space or relating to the investigation of a fine-only misdemeanor that does not result in arrest, without written authorization from the person who is the subject of that portion of the recording.
  - If you do not receive permission for release from the subject of the recording, the recording is confidential pursuant to section 1701.661(f).

**WHAT YOU NEED TO TELL US ABOUT BODY WORN CAMERA RECORDINGS:**

- Explain whether the requestor provided the four required pieces of information in the request for information.
- If the recording was made in a private space, inform our office whether you have received written authorization from the person who is the subject of the ruling.
- Inform our office if the recording involves an investigation of conduct that constitutes a misdemeanor punishable by fine only, and if so, state whether you have received written authorization from the person who is the subject of the recording.