ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2006

Ms. Christy Drake-Adams
Bovey, Akers & Bojorquez, L.L.P.
12325 Hymeadow Dr., Ste. 3-200
Austin, Texas 78750

OR2006-01568

Dear Ms. Drake-Adams:

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# 242484.

The Brenham Police Department (the "department"), which you represent, received a request for twelve categories of information pertaining to a named officer. You state that some of the requested information has been released. You claim that some of the submitted information is not subject to release pursuant to the Act, and that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.1175, 552.122, 552.130, 552.136, and 552.140 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.[1]

Initially, we note that some of the information in Tab K does not pertain to the officer at issue, and thus this information is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release the unresponsive information in response to this request.

You next assert that some of the submitted information consists of judicial records that are not subject to release pursuant to the Act. The Act does not apply to records of the judiciary. Gov't Code § 552.003(1)(B). Information that is "collected, assembled or maintained by

[1]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

or for the judiciary" is also not subject to the Act. *Id.* § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). *But see Benavides v. Lee*, 665 S.W.2d 151 September 19, 2005 (Tex. App.–San Antonio 1983, no writ); Open Records Decision No. 646 (1996) at 4 ("function that a governmental entity performs determines whether the entity falls within the judiciary exception to the . . . Act.").

You assert that Tab R contains a "complaint that involves records of the judiciary," and thus is not subject to release pursuant to the Act. Tab R contains a fax from a justice of the peace to the district attorney and the chief of police criticizing the conduct of the officer at issue. The remaining documents in Tab R are internal administrative documents pertaining to that complaint. Upon review of your arguments and the information at issue, we find you have not established that the documents in Tab R are either records of the judiciary or were collected, assembled, or maintained by or for the judiciary. *See* Gov't Code § 552.003, 552.0035. Accordingly, the documents in Tab R are subject to the Act and must be released unless an exception to disclosure under the Act applies.

Next, you assert that the submitted information contains complaint forms where the "complainants provided the information with the understanding that the information would remain confidential." We note that information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the requested information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

We next note that Exhibit D contains completed evaluations that are subject to section 552.022 of the Government Code. Under section 552.022(a)(1), a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Sections 552.103 and 552.122 are discretionary exceptions to public disclosure that protect the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 542 (1990) (statutory predecessor to section 552.103 may be waived), 522 (1989) (discretionary exceptions in general). As such, sections 552.103 and 552.122 do not qualify as other law that makes information confidential. Thus, the department may not withhold any this information pursuant to section 552.103 or 552.122; however, we will address your assertion that this information is excepted under section 552.108.

You assert that the submitted information is excepted under section 552.103 of the Government Code, which provides as follows:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
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> . . .
>
> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.–Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.–Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.[2] Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). After review of your representations and the submitted documents, we conclude you have not demonstrated that the department

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[2]In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

reasonably anticipated litigation when it received the request for information; therefore, the department may not withhold any of the submitted information pursuant to section 552.103.

You assert that some of the submitted information is confidential under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 730.004 of the Transportation Code provides that "an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record." We note, however, that an "agency" for purposes of chapter 730 of the Transportation Code "includes any agency or political subdivision of this state, or an authorized agent or contractor of an agency or political subdivision of this state, that compiles or maintains motor vehicle records." Trans. Code § 730.003(1) (defining agency). We find you have not established that the department is an agency for purposes of chapter 730; therefore, the submitted information is not confidential under section 730.004, and the department may not withhold the information under section 552.101 of the Government Code on that ground. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).

The submitted information contains an I-9 form (Employment Eligibility Verification) and its attachments, which are governed by section 1324a of title 8 of the United States Code. This section provides that an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the I-9 form and its attachments are confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

The information at issue contains an L-2 form (Declaration of Medical Condition) and an L-3 form (Declaration of Psychological and Emotional Health), which are required by the Texas Commission on Law Enforcement Officer Standards and Education (the "commission"). Section 1701.306 of the Occupations Code provides as follows:

> (a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:
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> > (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
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> > (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

> (b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). We agree that these declarations are confidential under section 1701.306 of the Occupations Code, and must be withheld under section 552.101 of the Government Code.

The submitted information contains an F-5 form (Report of Separation of License Holder), which is made confidential by section 1701.454 of the Occupations Code. Section 1701.454 provides in relevant part that "[a] report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code. Occ. Code § 1701.454(a). The department must withhold the F-5 form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28 of part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. The submitted information does not contain CHRI for purposes of chapter 411; therefore, none of the submitted information is confidential under chapter 411, and the department may not withhold any information under section 552.101 of the Government Code on that ground.

Section 552.101 also encompasses article 20.02 of the Code of Criminal Procedure, which provides that "[t]he proceedings of the grand jury shall be secret." Thus, information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and is excepted from disclosure under section 552.101 of the Government Code. Having reviewed the submitted information at issue and your arguments, we agree that some of the of the submitted information reveals the proceedings of a grand jury; therefore, this information, which we have marked, is confidential under article 20.02 and must be withheld under section 552.101 of the Government Code. However, none of the remaining information is confidential pursuant to article 20.02 of the Code of Criminal Procedure, and the department may not withhold the remaining information under section 552.101 of the Government Code on that ground.

Section 552.101 also encompasses section 414.009 of the Government Code, which provides in relevant part the following:

> A person who is a member or employee of the [Crime Stoppers Advisory Council] or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

Gov't Code § 414.009(a). You state that Tab N contains a "tip sheet from a crime stoppers organization." Based on this representation, we agree that this document, which we have marked, is confidential under section 414.009 of the Government Code and must be withheld under section 552.101 of the Government Code. *See* Gov't Code § 414.009(a)

We note that the submitted information contains fingerprint information. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, the department must withhold this information, which we have marked, under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.101 also encompasses information protected by common law privacy. 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." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.–Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. Accordingly, we address the department's section 552.102 claim in conjunction with its common law privacy claim under section 552.101 of the Government Code.

Common law privacy protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565; *U.S. Dep't of Justice v. Reporters Comm. for*

Freedom of the Press, 489 U.S. 749 (1989); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). In addition, in *Morales v. Ellen,* 840 S.W.2d 519 (Tex. App.–El Paso 1992, writ denied), the court determined that a governmental body must withhold information that would tend to identify a witness or victim of sexual harassment. *See Ellen*, 840 S.W.2d at 525 ("the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released"). But this office has found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). The submitted documents include information pertaining to an investigation conducted by the department of department officers who sexually harassed members of the Washington County Sheriff's Department (the "sheriff's department"). This investigation does not constitute a sexual harassment investigation in the employment context of the department for purposes of *Ellen*; therefore, the department may not withhold any information in this report under section 552.101 on that ground. However, we have marked other information that is confidential under common law privacy, and the department must withhold this information pursuant to section 552.101.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5; *see Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). After review of the remaining documents, we find that they do not contain information that is confidential under constitutional privacy; therefore, the department may not withhold any of the remaining information under section 552.101 on that ground.

You assert that some of the submitted information is excepted under section 552.108 of the Government Code. Section 552.108(b)(1) 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." 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 that this provision 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 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, section 552.108 generally is not applicable to an internal administrative investigation involving a law enforcement officer that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. 2002, no pet.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.–El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982).

To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. 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 assert that release of some of the information in Tabs D and E would reveal use-of-force policies and related training and release of Tab F "could educate the criminal element as to officers that are not particularly good shooters." You make similar arguments pertaining to other submitted information. After reviewing the information at issue and your arguments and representations, we find the department has established that release of some of the submitted information would interfere with law enforcement; therefore, the department may withhold this information under section 552.108. However, the department has not established that release of any of the remaining information would interfere with law enforcement; therefore, the department may not withhold the remaining information pursuant to section 552.108.

We note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act; therefore, the department must

withhold the social security numbers you have marked, as well as those we have marked, in the submitted information under section 552.147.[3]

You assert that some of the submitted information is excepted under section 552.117 of the Government Code, which provides in relevant part the following:

> (a) Information is excepted from the requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number of the following person or that reveals whether the person has family members:
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> > (1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;
> >
> > (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024 or 552.1175, as applicable[.]

Gov't Code § 552.117(a)(1)-(2); *see* Open Records Decision No. 622 (1994). We note that an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied).

The submitted information contains information pertaining to the officer at issue, other department officers, a deceased department officer, and a city employee. We note that section 552.117(a)(2) does not apply to a deceased peace officer. However, the department must withhold the information pertaining to the officer at issue, as well as other department officers, that we have marked pursuant to section 552.117(a)(2).

Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us that the city employee "has not submitted any type of written request that her personal information be kept confidential"; therefore, the department may not withhold information pertaining to this employee pursuant to section 552.117. However, the department must withhold the information pertaining to the deceased officer that we have marked under section 552.117 if the officer had elected to keep her information confidential under section 552.024.

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[3]We note that 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 under the Act.

You assert that some of the information at issue is excepted under section 552.1175 of the Government Code, which provides in part the following:

> Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:
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> (1) chooses to restrict public access to the information; and
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> (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The submitted documents contain information pertaining to peace officers of the sheriff's department. If these individuals are currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b), the department must withhold the information, which we have marked, under section 552.1175; however, the department may not withhold this information under section 552.1175 if these officers do not elect to restrict access to this information.

You assert that some of the information not subject to section 552.022 in Tab D is excepted under section 552.122 of the Government Code. Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). You assert that grading forms of officer firearm simulator training in Tab D are test items; however, after review of your arguments and the information at issue, we conclude that none of the submitted information consists of a test item for purposes of section 552.122(b); therefore, you may not withhold any of the submitted information under section 552.122.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that a motor vehicle operator's, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We note that section 552.130 does not encompass motor vehicle record information of other states. We also note that section 552.130 is designed to protect an individual's privacy and that the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.–Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). The department must withhold the Texas motor vehicle record information we have marked under section 552.130.

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136(b) states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." The remaining information does not contain access device numbers; therefore, the department may not withhold any of the remaining information pursuant to section 552.136.

Finally, you assert that a DD-214 form in the submitted information is excepted under section 552.140 of the Government Code. Section 552.140 provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a), (b). You do not inform us when the department came into possession of the submitted DD-214 form. Therefore, if the DD-214 form came into the possession of the department on or after September 1, 2003, the department must withhold this form in its entirety under section 552.140. If the form was received by the department before September 1, 2003, the department may not withhold it pursuant to section 552.140.

To conclude, the department must withhold the following pursuant to section 552.101 of the Government Code: (1) the I-9 form and its attachments pursuant to section 1324a of Title 8 of the United States Code; (2) the L-2 and L-3 forms pursuant to section 1701.306 of the Occupations Code; (3) the document marked pursuant to article 20.02 of the Code of Criminal Procedure; (4) the information marked under 414.009 of the Government Code; (5) the marked fingerprint pursuant to chapter 560 of the Government Code; (6) the F-5 form pursuant to section 1701.454 of the Occupations Code; and (7) the information marked under common law privacy. The department must also withhold the following: (1) the marked social security numbers under section 552.147; (2) the information pertaining to the department officers marked under section 552.117(a)(2); (3) the information pertaining to the deceased officer marked under section 552.117(a)(1) if the officer had elected to keep that information confidential pursuant to section 552.024; (4) the information marked under section 552.1175 if the individuals at issue are currently licensed peace officers who elect to restrict access to this information in accordance with section 552.1175(b); (5) the information marked under section 552.130; and (6) the DD-214 form under section 552.140 if it was received by the department on or after September 1, 2003. The department must release the remaining information.

This letter ruling is limited to the particular records 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 records or any other circumstances.
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/er

Ref: ID# 242484

Enc. Submitted documents

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