



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 24, 2008

Mr. Norman Ray Giles  
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1200 Smith Street, Suite 1400  
Houston, Texas 77002

OR2008-03811

Dear Mr. Giles:

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# 305944.

The City of Pasadena (the "city"), which you represent, received a request for the e-mail records of seventeen city employees over a specified period of time, including e-mails in the "trash bin" and on any backup systems.<sup>1</sup> You assert that some of the requested information is not subject to the Act. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.117, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>We note that the city raises section 552.107 of the Government Code; and we understand the city to raise section 552.111, as it refers to the "deliberative process privilege," and the "work product privilege." However, the city fails to provide any explanation of how section 552.107 or section 552.111 are applicable to the submitted information. Accordingly, we do not address section 552.107 or section 552.111. *See* Gov't Code §§ 552.301, .302. Additionally, the city refers to the executive, law enforcement, critical analysis, and official information privileges. As we are unable to discern what exceptions under the Act the city refers to in connection with these privileges, we do not address these arguments.

<sup>2</sup>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.

You state that compliance with the request for information would "substantially and unreasonably impede the routine operation of the City of Pasadena Municipal Court." We note, however, that the administrative inconvenience of providing public records to a requestor in response to an open records request does not constitute sufficient grounds for denying such a request. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Further, a governmental body must make a good faith effort to relate a request to information which it holds. *See Open Records Decision No. 561 at 8* (1990). We therefore find that the city may not refuse to comply with any portion of this request on the basis that doing so would be burdensome.

You assert that some of the responsive e-mail messages exist as computer files stored remotely on the city's backup tapes. In general, computer software programs keep track of the location of files by storing the location of data in the "file allocation table" (FAT) of a computer's hard disk. The software then displays the file as being in a specific storage location. Usually, but not always, when a file is "deleted," it is not actually deleted, but the display of the location is merely shown to be moved to a "trash bin" or "recycle bin." Later, when files are "deleted" or "emptied" from these "trash bins," the data is usually not deleted, but the location of the data is deleted from the FAT. Some software programs immediately delete the location information from the FAT when a file is deleted. Once the location reference is deleted from the FAT, the data may be overwritten and permanently removed.

As noted, you inform us that a portion of the requested e-mail messages are contained on the city's backup tapes. We understand you to state that the e-mail messages are not maintained on the hard drive of the computers at issue. You explain that to restore the information at issue, the city would be required to load backup tapes and restore the post office data contained on each tape. Based on your representations, we determine that the locations of the files have been deleted from the FAT system. We therefore find that the e-mail messages at issue were no longer being "maintained" by the city at the time of the request, and are not public information subject to disclosure under the Act. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); *see also* Gov't Code §§ 552.002, 552.021 (public information consists of information collected, assembled, or maintained by or for governmental body in connection with transaction of official business). Accordingly, we conclude that the Act does not require the city to release the portion of the requested e-mail messages that are stored remotely in this instance.

You assert that portions of the submitted information consist of judicial records and, therefore, are not subject to release under the Act. The Act generally requires the disclosure of information maintained by a "governmental body." However, while the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See* Gov't Code § 552.003(1)(A), (B). In determining whether a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. *See Open Records Decision No. 646 at 2-3* (1996); *Benavides v.*

*Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ). In this instance, the submitted information consists of e-mail records of city employees generated during a certain time period. You do not inform us, and the information at issue does not indicate, that the city holds the e-mails on behalf of the judiciary. Upon review, we find that the submitted information was created and maintained by the city for administrative purposes. Therefore, the submitted information is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.<sup>3</sup>

You also contend that some of the submitted information is not subject to the Act because it is “purely personal.” The Act applies to “public information,” which is defined under section 552.002 of the Government Code as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002; *see also id.* § 552.021. Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. You assert that the content of some of the submitted information is purely personal. *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). However, you have failed to identify any such information, and thus, we are unable to determine which e-mails contain what you consider to be “purely personal” information. Accordingly, we find that all of the submitted e-mail communications of city employees were collected, assembled, or maintained by the city in connection with the transaction of official business. Therefore, all of the submitted information is “public information” under section 552.002 and must be released, unless it falls within an exception to public disclosure. *See* Gov't Code §§ 552.021, .301, .302.

We note that some of the requested information appears to have been the subject of two previous requests for information, in response to which this office issued Open Records Letter Nos. 2007-13664 (2007) and 2007-15876 (2007). We presume that the pertinent facts and circumstances have not changed since the issuance of these prior rulings. Thus, we determine that the city may continue to rely on these prior rulings with respect to any information requested in those instances that is also at issue here. *See* Open Records

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<sup>3</sup>We note that the Texas Rules of Judicial Administration govern the public disclosure of judicial records, not information that is subject to the Act.

Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the requested information was not addressed in Open Records Letter Nos. 2007-13664 and 2007-15876, we will address your arguments against disclosure.

We will first address your claim under section 552.108 of the Government Code, as it is potentially the most encompassing. Section 552.108 provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;

...

(b) An 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 is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)-(b). Generally, subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. In contrast, sections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body

that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We understand you to claim some of the submitted information is excepted from disclosure under sections 552.108(a)(1), 552.108(a)(2), 552.108(b)(1), and 552.108(b)(2) of the Government Code. Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of a law enforcement agency, the governmental body may withhold the information under section 552.108 if (1) it demonstrates that the information relates to the pending case and (2) this office is provided with a representation from the law enforcement agency that it wishes to have the information withheld.

You assert that a portion of the submitted information pertains to the arrest and subsequent death of an individual in custody. We have been informed by the Harris County District Attorney (the "district attorney") that the district attorney objects to the release of this information because it would interfere with the district attorney's criminal investigation of this incident. Based on this representation, we conclude that the release of the information pertaining to the arrest and subsequent death in custody of the named individual would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the city may withhold this information under section 552.108(a)(1).

You also state that some of the submitted information pertains to other, unspecified, criminal offenses which are under investigation. However you have not specified which of the submitted e-mails pertain to these ongoing criminal investigations. *See* Gov't Code § 552.301(e)(2) (governmental body must identify which exceptions apply to which parts of the information). Thus, you have not met your burden under section 552.108(a)(1). Accordingly, the city may not withhold any of the remaining information under section 552.108(a)(1).

This office has concluded that section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (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), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment). We find that you have not demonstrated how or why the release of the remaining submitted information would compromise the security or operations of a law enforcement agency. Accordingly, we

conclude that the city may not withhold any portion of the remaining information under section 552.108(b)(1) of the Government Code.

Sections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information in question relates to a concluded case that did not result in a conviction or a deferred adjudication. As noted, you state that some of the submitted information pertains to pending criminal investigations. Based on your representations, we find that you have not shown that any portion of the remaining submitted information relates to an investigation that concluded in a result other than conviction or deferred adjudication. We therefore conclude that the city may not withhold any of the remaining information under sections 552.108(a)(2) or 552.108(b)(2) of the Government Code.

We next address your claim under section 552.103 of the Government Code. Section 552.103 provides in relevant part 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.

...

(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). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103 exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the governmental body received the request for information, 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). A governmental body must meet both prongs of this test for information to be excepted under section 552.103. The purpose of section 552.103 is to enable a governmental body to protect its position in litigation by forcing parties seeking information relating to the litigation to obtain such information through discovery procedures. *See* Open Records Decision No. 551 at 4-5 (1990). Thus, when the opposing party has seen or had access to information relating to anticipated litigation, there is no interest in withholding that information from public disclosure under

section 552.103. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We further note that the applicability of section 552.103 ends once the related litigation concludes or is no longer reasonably anticipated. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

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 establish that litigation is reasonably anticipated, a governmental body must provide this office with "concrete evidence showing that the claim that litigation may ensue 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.<sup>4</sup> 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). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You inform us that the city received notice, prior to this request for information, from an attorney stating that "his law firm will pursue any and all claims resulting from the arrest and subsequent death of [a named individual]." You also state that the attorney has filed a petition for authorization to take depositions in anticipation of asserting claims based on the circumstances of this occurrence. Upon review, we conclude that the city reasonably anticipated litigation on the date that it received this request for information. We understand you to claim that all of the submitted information is excepted from public disclosure under section 552.103, however, you do not explain how the remaining submitted information is related to the anticipated litigation. Based on these representations and our review, we determine that the city has not demonstrated that the remaining submitted information relates to pending or reasonably anticipated litigation. Accordingly, the city may not withhold the remaining information under section 552.103 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. As part of the Texas Homeland

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<sup>4</sup>Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), *see* Open Records Decision No. 336 (1982); (2) 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 (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

Security Act (the "HSA"), sections 418.175 through 418.182 were added to chapter 418 of the Government Code. These provisions make certain information related to terrorism confidential. You assert that portions of the submitted information are confidential under sections 418.175 through 418.182 of the Government Code. The fact that information may relate to a governmental body's security measures 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 of a statute's key terms is not sufficient to demonstrate the applicability of the claimed provision. As with any exception to disclosure, a claim under sections 418.175 through 418.182 must be accompanied by an adequate explanation of 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).

Although you generally assert that some of the submitted information is confidential under the HSA, you have not provided any arguments explaining this assertion, nor have you indicated which portions of submitted information you seek to withhold. See *id.* § 552.301(b)(e). Accordingly, we find that you have failed to demonstrate that the information at issue is confidential under the HSA, and the city may not withhold any of this information under section 552.101 on that basis.

Section 552.101 also encompasses section 143.089 of the Local Government Code. We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). 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). *Abbott v. City of 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 in 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.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-.055. Such records are subject to release under chapter 552 of the Government Code. See *id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's

internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the requestor seeks records that are maintained in the city police department's internal file pursuant to section 143.089(g). However, you do not inform us that any of the remaining submitted information is maintained in the police department's internal file pursuant to section 143.089(g). Therefore, we conclude that none of the remaining information is confidential pursuant to section 143.089(g) and the city may not withhold it under section 552.101.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code. This exception encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, 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 Texas 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. None of the remaining submitted information consists of CHRI obtained from the DPS or another criminal justice agency; therefore, none of the remaining information is confidential under chapter 411 and the city may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The information at issue does not contain any medical records; therefore, the MPA is inapplicable and the city may not withhold the remaining submitted information under section 552.101 in conjunction with the MPA.

You argue that a portion of the submitted information is excepted from disclosure under section 552.101 in conjunction with section 1701.306 of the Occupations Code. Section 1701.306 governs the release of L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms and provides as follows:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(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

(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). The information at issue does not contain any L-2 or L-3 forms; therefore, section 1701.306 of the Occupations Code is inapplicable and the city may not withhold any of the remaining submitted information under section 552.101 on that basis.

You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 560.002 of the Government Code. Chapter 560 of the Government Code provides that a governmental body may not release the biometric identifiers of an individual except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier"), 560.002 (prescribing the manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). Upon review, however, we find that the remaining submitted information does not contain any biometric identifiers. Therefore, the city may not withhold any of the remaining submitted information under section 552.101 in conjunction with section 560.003 of the Government Code.

You also raise section 552.101 in conjunction with section 611.002 of the Health and Safety Code, which is applicable to mental health records and provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). We find that none of the remaining submitted information falls within the scope of section 611.002, and therefore the city may not withhold any information on that basis under section 552.101 of the Government Code.

Section 552.101 also encompasses section 1703.306 of the Occupations Code. Section 1703.306(a) provides that “[a] polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person[.]” You do not state that the requestor falls into any of the categories of individuals authorized to receive the submitted polygraph information. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note that a portion of the remaining submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261; therefore, this information, which we have marked, is within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as “person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general

purposes”), 261.001 (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). You do not inform us that the city has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given this assumption, we conclude that the information we have marked is confidential pursuant to section 261.201 of the Family Code, and that the city must withhold it under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 also encompasses section 58.007 of the Family Code. Section 58.007(c) provides as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct in need of supervision, that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. *See* Fam. Code § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). We note that a portion of the remaining submitted information pertains to juvenile delinquent conduct or conduct in need of supervision occurring after September 1, 1997. None of the exceptions in section 58.007 appear to apply. Accordingly, the information we have marked is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy. 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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: 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), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You state that "the release of [the requested information] would impermissibly impose upon the [c]ity's administration of its internal affairs and is protected from disclosure by the constitutional doctrine embodied in" *Garrity v. New Jersey*, 385 U.S. 493 (1967) and *Spevack v. Klein*, 385 U.S. 511 (1967).<sup>5</sup> Both *Garrity* and *Spevack* dealt with the constitutional prohibition against self-incrimination in court or other judicial proceedings. *See Spevack*, 385 U.S. 511, *Garrity*, 385 U.S. 493. Thus, neither *Garrity* nor *Spevack* is applicable here because the submitted information is released in response to a request under the Act and not used as evidence in a criminal prosecution or other judicial proceeding. Therefore, we find that these cases provide no basis for withholding the remaining submitted information.

You claim that some of the submitted information is excepted under section 552.117. Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Accordingly, the city must withhold the information we have marked under section 552.117(a)(1) if the

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<sup>5</sup>As noted above, section 552.101 excepts from disclosure information considered made confidential by constitutional law.

employees to whom it pertains timely elected confidentiality for this information under section 552.024.

Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information of a peace officer, regardless of whether the officer elected under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) also encompasses the personal cellular telephone number and pager number of a peace officer. *See* Open Records Decision No. 670 (2001). We have marked the type of personal information of peace officers that must be withheld under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state."<sup>6</sup> Gov't Code § 552.130. We note that section 552.130 does not encompass motor vehicle record information of other states. The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

The remaining submitted information contains a personal identification number. Section 552.136 of the Government Code 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." Gov't Code § 552.136. Accordingly, the city must withhold the information we have marked under section 552.136.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses we have marked in the remaining information are not of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail addresses we have marked in accordance with section 552.137 unless the city receives consent for their release.

We note that some of the remaining submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of

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<sup>6</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).

copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city may withhold the information that is related to the district attorney's criminal investigation of the death of the named individual under section 552.108(a)(1). The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 1703.306 of the Occupations Code, (2) section 261.201 of the Family Code, (3) section 58.007 of the Family Code, and (4) common-law privacy. The city must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employees to whom it pertains timely elected confidentiality for this information under section 552.024. We have marked the type of personal information of peace officers the city must withhold under section 552.117(a)(2) of the Government Code. The city must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. Unless the city receives consent for their release, the city must withhold the e-mail addresses we have marked in accordance with section 552.137 of the Government Code. The remaining information must be released to the requestor, but any information protected by copyright must be released in accordance with copyright law.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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. 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 305944

Enc. Submitted documents

c: Mr. Robert Crowe  
Reporter  
The Houston Chronicle  
801 Texas Avenue  
Houston, Texas 77002  
(w/o enclosures)