



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2011

Ms. Caroline Kelley
City Attorney
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

Ms. Janice B. Poppenhusen
Custodian of Records
City of Missouri City Police Department
3849 Cartwright Road
Missouri City, Texas 77459

OR2011-16133

Dear Ms. Kelley and Ms. Poppenhusen:

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# 435032.

The City of Missouri City (the "city") received a request for five categories of information related to a named city police officer. The city's police department (the "department") has submitted separate correspondence to this office with regard to category one of the request, as well as separate responsive records it seeks to withhold from disclosure under sections 552.101, 552.102, and 552.117. The city has submitted information responsive to the remaining categories and claims that its submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.111, 552.115, 552.117, 552.1175, 552.119, 552.122, 552.130, 552.136, 552.137, 552.140, 552.147, and 552.152 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We first address the city's argument under section 552.103 of the Government Code for its submitted Exhibit B. Section 552.103 of the Government Code provides, in relevant part:

(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). The governmental body has the burden of providing relevant facts and documents to show 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 on the date 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). 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.* This office has concluded that a governmental body's receipt of a claim letter that it represents to be in compliance with the notice requirements of the Texas Tort Claims Act ("TTCA"), chapter 101 of the Civil Practice and Remedies Code, or an applicable municipal ordinance, is sufficient to establish that litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996). If that representation is not made, the receipt of a claim letter is a factor we will consider in determining, from the totality of the circumstances presented, whether the governmental body has established that litigation is reasonably anticipated. *Id.*

The city states it received two notice of claim letters from an attorney representing a former department officer alleging misconduct related to the termination of the attorney's client. The city submits one of these notice of claim letters for our review. We understand the city to argue the submitted notice of claim complies with the notice requirements in the TTCA. However, we note the submitted notice of claim letter was received on August 23, 2011, which is after the date the instant request was received by the city on August 17, 2011. Accordingly, we find the city has failed to demonstrate the city reasonably anticipated

litigation on the date it received the instant request for information. Accordingly, the city may not withhold its Exhibit B under section 552.103 of the Government Code.

Next, we address the city's argument under section 552.152 of the Government Code, as it is potentially the most encompassing. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20) (to be codified as Gov't Code § 552.152). The city seeks to withhold its submitted Exhibit B in its entirety under section 552.152. Upon review, we find the city has failed to demonstrate that release of this information would subject any officer to a substantial threat of physical harm. Therefore, the city may not withhold any portion its Exhibit B under section 552.152.

Next, we turn to the department's arguments under section 552.101 of the Government Code for its submitted Exhibit C. 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. Section 552.101 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. *See* 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 DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Upon review, we find that a portion the department's Exhibit C consists of confidential CHRI. Accordingly, the department must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. However, upon review, we find that none of the remaining information in the department's Exhibit C consists of CHRI for purposes of chapter 411 of the Government Code. Accordingly, none of the remaining information the department's Exhibit C may be withheld on that basis.

Section 552.101 also encompasses section 1701.306 of the Occupations Code, which provides:

(a) The [Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE")] 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 [TCLEOSE]. A declaration is not public information.

Occ. Code § 1701.306(a)-(b). Upon review, we find the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms in the city's Exhibit B are confidential under section 1701.306 of the Occupations Code and must be withheld under section 552.101 of the Government Code.¹

The city claims the submitted information it has marked is confidential under section 552.101 of the Government Code in conjunction with the Medical Practice Act ("MPA"), subtitle B of title 3 of the Occupations Code, which governs the public availability of medical records. *See id.* §§ 151.001-165.160. Section 159.002 of the MPA provides in pertinent part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *Id.* §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). Upon review, we find the city has failed to demonstrate how the information it has marked was either created by or under the supervision of a physician or contains the identity, diagnosis, evaluation, or treatment of a patient by a physician. Thus, the marked information in the city's Exhibit B does not constitute medical records for purposes of the MPA, and it may not be withheld on this basis.

Section 552.101 also encompasses chapter 611 of the Health and Safety Code. Section 611.002 provides in pertinent 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"). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See id.* §§ 611.004, .0045; *see also* Open Records Decision No. 565 (1990). Upon review, we find a portion of the information in the city's Exhibit B, which we have marked, consists of a mental health record that is subject to chapter 611 of the Health and Safety Code. Accordingly, the city must withhold the marked mental health records under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. However, we find no portion of the remaining information consists of mental health records. Thus, no portion of the remaining information in the city's Exhibit B may be withheld pursuant to section 552.101 of the Government Code in conjunction with section 611.002(a) of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses Chapter 560 of the Government Code, which 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), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the 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 city must withhold the fingerprints we have marked in its Exhibit B under section 552.101 in conjunction with section 560.003.

Section 552.101 of the Government Code also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Additionally, this office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure. *See* Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 455 at 9 (1987) (employment applicant’s salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). Additionally, this office has found a compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual’s criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Moreover, a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. Determinations under common-law privacy must be made on a case-by-case basis. *See Indus. Found.*, 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case); Open Records Decision No. 373 at 4 (1983). However, information relating to routine traffic violations is not excepted from release under common-law privacy. *Cf. Gov’t Code* § 411.082(2)(B) (criminal history record information does not include driving record information). Additionally, we note criminal history information obtained by a law enforcement agency in the process of hiring a peace officer is a matter of legitimate public interest. We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most

intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (scope of public employee privacy is narrow). Upon review, we find the information we marked in the city's Exhibit B and the department's Exhibit B is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate concern to the public. Consequently, the city may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

The city and the department claim portions of the remaining information in the city's Exhibit B and the department's Exhibit B are excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). We note the city asserts the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court recently expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163, at *5 (Tex. Dec. 3, 2010). The supreme court then considered the applicability of section 552.102 and held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Id.* at *10. Having carefully reviewed the submitted information, we have marked the information in the city's Exhibit B and the department's Exhibit B the city must withhold under section 552.102(a). We find, however, none of the remaining information may be withheld on that basis.

Section 552.102(b) excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee's name, the courses taken, and the degree obtained from disclosure. Gov't Code § 552.102(b); *see also* Open Records Decision No. 526 (1989). Upon review, we find none of the submitted information in the city's Exhibit B consists of higher education transcripts of a professional public school employee. Therefore, the city may not withhold any of the information at issue under section 552.102(b) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See*

Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). 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 Nos. 474 at 4-5 (1987), 372 (1983).* Where an agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information. We understand the information you have marked consists an investigation conducted by the Philadelphia, Pennsylvania Police Department. However, the city has not provided this office with any representation to indicate the Philadelphia, Pennsylvania Police Department, which is the investigative agency with the law enforcement interest, wishes to withhold the submitted information. Accordingly, the city has have failed to demonstrate section 552.108(a)(2) of the Government Code is applicable to the information the city has marked in its Exhibit B, and the city may not withhold the marked information under that exception.

Section 552.115 excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See Open Records Decision No. 338 (1982).* The city raises section 552.115 for the submitted birth certificate in its Exhibit B. However, because it is maintained by the city, the submitted birth certificate may not be withheld under section 552.115.

Although the city raises section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for the portions of information in its Exhibit B that the city holds in its capacity as an employer. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.² Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)(2)). We note section 552.117 is applicable to a personal pager or cellular phone number only if it is paid for by a governmental body. *See Open Records Decision No. 670 at 6 (2001)* (statutory predecessor to section 552.117(a)(2) encompassed personal cellular phone numbers and personal pager numbers of peace officers who purchased cellular or pager service with their personal funds). Accordingly, the city must withhold the

²Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

information we marked in the city's Exhibit B and the department's Exhibit B under section 552.117(a)(2) of the Government Code; however, the city may withhold the marked cellular telephone numbers only if the individual pays for the cellular telephone service with personal funds.³ As to the remaining information at issue, we find it is not subject to section 552.117 of the Government Code, and the city may not withhold it on that basis.

You assert the photographs in the submitted information are excepted from disclosure under section 552.119 of the Government Code, which provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the information does not demonstrate on its face, that release of the photograph would endanger the life or physical safety of a peace officer. Upon review, we find the city has failed to demonstrate how the release of the officer's photographs at issue would endanger the life or physical safety of the officer. Therefore, the city may not withhold any photographs of the peace officer it has submitted in its Exhibit B under section 552.119 of the Government Code.

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" *Id.* § 552.122(b). In Open Records Decision No. 626 (1994), this office determined 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. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the

³As our ruling is dispositive for this information, we need not address the remaining arguments against disclosure of this information.

effectiveness of future examinations. *Id.* at 4–5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

The city seeks to withhold the submitted interview questions and the answers provided to those questions under section 552.122 of the Government Code. Having considered the city's arguments and reviewed the information at issue, we find the questions we have marked are test items under section 552.122(b) of the Government Code. We also find the answers we have marked would tend to reveal the questions. Therefore, the city may withhold the information we have marked in its Exhibit B under section 552.122 of the Government Code. However, the city has not demonstrated how the remaining information at issue consists of test items for the purpose of section 552.122. Accordingly, the city may not withhold the remaining information at issue in its Exhibit B under section 552.122 of the Government Code.

You assert some of the remaining information is excepted from disclosure section 552.111 of the Government Code. The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5 (1993). A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Additionally, section 552.111 does not generally except from disclosure purely factual information severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5.

The city generally asserts the information at issue pertains to the hiring of officers to the city's police department. The city has not, however, explained how this information pertains to the city's policymaking processes. Furthermore, we find the information at issue pertains to routine administrative and personnel matters, and the city has not explained how that

information pertains to administrative and personnel matters of broad scope that affect the city's policy mission. Therefore, the city has failed to demonstrate how the deliberative process privilege applies to the remaining information it seeks to withhold. Consequently, the city may not withhold any of the remaining information it has marked in its Exhibit B under section 552.111 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or an agency of another state or country is excepted from public release. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Upon review, we agree portions of the remaining information consist of motor vehicle record information. Accordingly, except where we have marked for release, the city must withhold the motor vehicle record information it has marked in the remaining information in its Exhibit B, as well as the additional information we have marked in the department's Exhibit C, under section 552.130 of the Government Code.

Section 552.136(b) of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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(b). This office has determined that insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Therefore, the city must withhold the insurance policy numbers it has marked in its Exhibit B pursuant to section 552.136 of the Government Code.

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* Gov't Code § 552.137(a)-(c). The e-mail addresses marked in the city's Exhibit B are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which the city has marked, must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

Section 552.140 provides in part:

- (a) This section applies only to a military veteran's Department of Defense Form DD-214 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.

Id. § 552.140(a). Section 552.140 provides 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 id.* § 552.140(a)-(b). From the submitted information in the city's Exhibit B, we are able to determine the city was first in possession of the military discharge form after September 1, 2003. Accordingly, the city must withhold this form, which we have marked, pursuant to section 552.140 of the Government Code. However, the remaining information the city has marked does not consist of DD-214 forms or other military discharge records that are confidential under section 552.140. Accordingly, the city may not withhold any of the remaining information under section 552.140 of the Government Code.

In summary, the city must withhold the CHRI we have marked in the department's Exhibit B under pursuant to section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The city must withhold the L-2 Declaration of Medical Condition and L-3 Declaration of Psychological and Emotional Health forms in its Exhibit B under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code. The city must withhold the marked mental health records in its Exhibit B under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The city must withhold the fingerprints we have marked in its Exhibit B under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The city must withhold the information we marked in its Exhibit B and in the department's Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked in its Exhibit B and in the department's Exhibit B under section 552.102(a) of the Government Code. The city must withhold the information we marked in its Exhibit B and in the department's Exhibit B, under section 552.117(a)(2) of the Government Code; however, the city may withhold the marked cellular telephone numbers only if the individual pays for the cellular telephone service with personal funds. The city may withhold the information we have marked in its Exhibit B under section 552.122 of the Government Code. Except where we have marked for release, the city must withhold the motor vehicle record information it has marked in the remaining information in its Exhibit B, as well as the additional information we have marked in the department's Exhibit C, under section 552.130 of the Government Code. The city must withhold the insurance policy numbers it has marked in its Exhibit B pursuant to section 552.136 of the Government Code. The city must withhold the personal e-mail addresses it has marked in its Exhibit B under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The city must withhold the submitted DD-214, which we have marked, pursuant to section 552.140 of the Government Code. The remaining information must be released.⁴

⁴We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information, including L-2 and L-3 declarations under section 552.101 in conjunction with section 1701.306 of the Occupations Code, fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 435032

Enc. Submitted documents

c: Requestor
(w/o enclosures)