



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 28, 2013

Mr. Leonard V. Schneider  
Counsel for the City of Huntsville  
Liles Parker P.L.L.C.  
Suite 120  
512 North Sam Houston Parkway East  
Houston, Texas 77060

OR2013-08819

Dear Mr. Schneider

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# 488414.

The City of Huntsville (the "city"), which you represent, received a request for (1) information pertaining to a specified internal investigation, (2) specified e-mails sent or received by the city's chief of police, (3) the personnel file of a named officer, and (4) specified policies and procedures.<sup>1</sup> You state the city has released information responsive to items 2, 3, and 4, and some information responsive to item 1. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information. We have also considered comments received from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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

<sup>2</sup>Although you raise section 552.101 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

You seek to withhold portions of the submitted information under section 552.108 of the Government Code, which provides the following:

(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[.]

...

(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[.]

Gov't Code § 552.108(a)(1), (b)(1).<sup>3</sup> A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). 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. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information).

You seek to withhold portions of the submitted information under section 552.108 of the Government Code. We note the submitted information is part of an internal investigation conducted by the city's police department. You inform us the submitted information consists of an investigation conducted by the Texas Rangers regarding excessive force used by a former officer with the city's police department. You also inform us the submitted information pertains to a pending prosecution conducted by the Walker County District Attorney's Office. However, you have not provided a representation from the Texas Rangers, the Walker County District Attorney's Office, or any other law enforcement entity asking the city, as proper custodian of information relating to alleged criminal conduct, to

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<sup>3</sup>Although you cite to section 552.108(b)(2) of the Government Code, we understand you to raise section 552.108(b)(1) based on the substance of your arguments.

withhold the information because its release would interfere with a pending investigation or prosecution. Therefore, the city may not withhold the submitted information under subsection 552.108(a)(1) of the Government Code. Additionally, you have not explained how release of the submitted would interfere with law enforcement or prosecution. Accordingly, the city may not withhold any portion of the submitted information under subsection 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>4</sup> Gov’t Code § 552.101. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. 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 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10–12. Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find the information we have marked constitutes CHRI for the purposes of chapter 411. Thus, the city must withhold the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Common-law privacy 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 satisfied. *Id.* at 681-82. The types 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,

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. 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). Upon review, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate public concern. Thus, the city must withhold the information we have marked in the submitted documents and indicated on the submitted audio recordings under section 552.101 in conjunction with 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.” Gov’t Code § 552.102(a). The Texas Supreme Court has 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the city must withhold the dates of birth we have indicated on the submitted audio recordings under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure a peace officer’s home address and telephone numbers, emergency contact information, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We also note a post office box number is not a “home address” for purposes of section 552.117.<sup>5</sup> Upon review, we find the city must withhold the personal information pertaining to city police officers, which we have marked in the submitted documents and indicated on the submitted audio recordings, pursuant to section 552.117(a)(2) of the Government Code, including cellular telephone numbers if the cellular telephone services are not paid for by a governmental body.

Section 552.1175 protects the home address, home telephone number, emergency contact information, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175.

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<sup>5</sup>*See* Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear purpose of Gov’t Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, HB. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, HB. 1976, 69th Leg. (1985)) (emphasis added).

Section 552.1175 applies to “peace officers as defined by Article 2.12, Code of Criminal Procedure.” *Id.* § 552.1175(a)(1). Section 552.1175 also applies to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. Upon review, we find the city must withhold the information we have marked in the submitted documents and indicated on the submitted audio recordings under section 552.1175, if the individuals to whom this information pertains are currently licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. However, the indicated cellular telephone numbers may only be withheld if the cellular telephone services are not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license or driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1)-(2). Upon review, we find the city must withhold the motor vehicle record information we have marked in the submitted documents and indicated on the submitted audio recordings under section 552.130 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The city must withhold the information we have marked in the submitted documents and indicated on the submitted audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the dates of birth we have indicated on the submitted audio recordings under section 552.102(a) of the Government Code. The city must withhold the information we have marked in the submitted documents and indicated on the submitted audio recordings under section 552.117(a)(2) of the Government Code, including cellular telephone numbers if the cellular telephone services are not paid for by a governmental body. If the individuals to whom the information pertains are currently licensed peace officers and elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the city must withhold the information we have marked in the submitted documents and indicated on the submitted audio recordings under section 552.1175. However, the cellular telephone numbers we have indicated may only be withheld if the cellular telephone services are not paid for by a governmental body. The city must withhold the motor vehicle record information we have marked in the submitted documents and indicated on the submitted audio recordings under section 552.130 of the Government Code. The remaining information must be released.<sup>6</sup>

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<sup>6</sup>We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov’t Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office. Furthermore, we note the information being released contains social security numbers of individuals other than the requestor’s client. 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 an attorney general decision under the Act. *See id.* § 552.147(b).

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](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,

A handwritten signature in cursive script that reads "Kathleen J. Santos". The signature is written in black ink and is positioned above the typed name.

Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/bhf

Ref: ID# 488414

Enc. Submitted documents

c: Requestor  
(w/o enclosures)