



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2014

Ms. Donna L. Johnson
Counsel for the City of Humble
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2014-00440

Dear Ms. Johnson:

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# 508846 (Ref. No. COHM13-040).

The Humble Police Department (the "department"), which you represent, received a request for any documents pertaining to certain personnel file information for two named police officers. You state the department has released some of the requested information. You state the department will redact information pursuant to sections 552.136 and 552.147 of the Government Code and under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code. You also inform us you have notified interested third parties of their right to submit comments to this office as to why their information should not be released. *See Gov't Code*

¹We note section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See ORD 684.*

§ 552.304 (interested part may submit written comments regarding availability of requested information). We have considered the exceptions you claim and reviewed the submitted information.

We first note two of the submitted discs contain video which cannot be viewed by this office. As this office cannot review the submitted videos, we conclude you have failed to comply with the requirements of section 552.301 of the Government Code with respect to that information. *See id.* § 552.301(e)(1)(D). Under section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the presumption the information is public and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists when the information is confidential by law or third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The department claims section 552.108 of the Government Code for the information at issue. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, no portion of the information at issue may be withheld under section 552.108 of the Government Code. Sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness; however, because this office is unable to review the submitted videos at issue, we have no basis to conclude the information is confidential by law. Therefore, we have no choice but to order the department to release that information. However, we note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Accordingly, to the extent the videos at issue contain motor vehicle record information, the department is authorized to withhold such information under section 552.130(c) of the Government Code. If you maintain a legible or audible copy of the information on the discs and believe any other information contained therein is confidential and may not lawfully be released, then you must challenge this ruling in court as outlined below pursuant to section 552.324 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A

governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). However, you have not explained how any portion of the information at issue pertains to pending criminal investigation or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find the department may not withhold any portion of the information at issue under section 552.108(a)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. 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 concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and 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). You indicate, and the information at issue reflects, the information you have marked relates to a criminal investigation that is concluded and did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude section 552.108(a)(2) is applicable to the information at issue.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co.*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). We note basic information does not include information subject to section 552.130 of the Government Code. *See* ORD 127 at 3-4. Thus, with the exception of basic information, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.²

Section 552.108(b)(1) of the Government Code excepts from required public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this section is applicable to the information that the governmental body seeks to withhold. *See id.* §552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706; Open Records Decision No. 434 at 2-3 (1986). 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 Cornyn*, 86 S.W.3d at 327 (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).

You seek to withhold the information you have marked relating to the duty hours and the locations of uniformed, off-duty police officers. You state release of the information at issue would interfere with law enforcement by endangering the life or physical safety of law enforcement personnel because it would reveal officers’ locations on specific days at specific times. Additionally, you state the information at issue contains details regarding the department’s policy detailing guidelines for the use of force and motor vehicle pursuit. You state the department specifically prepared these procedures for internal use to provide tactical assistance and constructive review for department employees. Further, you state some of the information at issue reveals successful tactics in the evasion of the police restraint. Based upon your representations and our review, we agree release of some of this information would interfere with law enforcement. *See, e.g.,* Open Records Decision No. 456 (1987) (holding that forms indicating location of uniformed, off-duty police officers are excepted from disclosure under statutory predecessor to section 552.108 due to officer safety concerns). Therefore, with the exception of the information we have marked for release, the department may withhold the information pertaining to off-duty hours and locations and use of force guidelines you have marked under section 552.108(b)(1) of the Government Code. However, we find you have failed to demonstrate the information we have marked for release is subject to section 552.108(b)(1) of the Government Code and may not be withheld on that basis.

Section 552.101 of the Government Code 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 information protected by other statutes, including the Driver’s Privacy Protection Act of 1994 (the “DPPA”), section 2721 of title 18 of the United States Code. Section 2721 provides, in part, the following:

- (a) In general.—A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9)[.]

(b) Permissible uses.—Personal information referred to in subsection (a) . . . and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency . . . in carrying out its functions.

...

(c) Resale or redisclosure.—An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). . . . Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

18 U.S.C. § 2721(a), (b)(1), (c). Section 2721(a) is applicable to state departments of motor vehicles. *See id.* § 2721(a). Pursuant to section 2721(b), personal information may be disclosed to certain entities by a state department of motor vehicles. *See id.* § 2721(b). You state some of the submitted information contains information protected under the DPPA. However, we find the department is not a state department of motor vehicles. Further, we find the department did not receive the information at issue from a state department of motor vehicles. Therefore, you have failed to demonstrate any of the information at issue is subject to section 2721(a) of the DPPA. Accordingly, the department may not withhold any of the information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You state some of remaining information is confidential under section 261.201. Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code), 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). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, we find you have failed to demonstrate the remaining information at issue involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 or how the information was used or developed in an investigation of alleged or suspected child abuse or neglect. Therefore, the department may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2). Section 58.007 provides, in pertinent part, 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 Subchapters B, D, and E.

Id. § 58.007(c). Upon review, we conclude the information we have marked consists of law enforcement records involving juvenile delinquent conduct occurring after September 1, 1997 and is, therefore, subject to section 58.007(c). *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of section 58.007). None of the exceptions in section 58.007 apply. Therefore, the information we have marked is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.³ However, we find you have failed to demonstrate the remaining information at issue is subject to section 58.007 of the Family Code. Thus, the department may not withhold the remaining information at issue under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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 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). We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement in the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find the information we have marked constitutes confidential CHRI. This

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

information must be withheld under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.⁴ However, we find you have failed to demonstrate the remaining information at issue consists of confidential CHRI. Thus, the department may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides, “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). However, section 560.002 of the Government Code provides, “[a] governmental body that possesses a biometric identifier of an individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). You do not inform us, and the submitted information does not indicate, section 560.002 permits disclosure of the fingerprint information. Therefore, the department must withhold the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, we find you have failed to demonstrate the remaining information you have marked is subject to section 560.003. Thus, the department may not withhold this information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer’s accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute.⁵ The submitted information contains CR-3 Texas Peace Officer’s Crash Reports. In this instance, the requestor has not provided the department with two of the three pieces of required information pursuant to section 550.065(c)(4). Accordingly, the department must withhold the submitted CR-3 accident reports under section 552.101 of the

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁵*See* Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

Government Code in conjunction with section 550.065(b) of the Transportation Code from this requestor.⁶

Section 552.101 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” *Id.* § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). You have not established the department compiles or maintains motor vehicle records. Therefore, section 730.004 does not apply to the department. Consequently, the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code.

Pursuant to section 730.007 of the Transportation Code, personal information may be disclosed to an authorized recipient under certain circumstances, including a governmental agency collecting information to carry out its functions. *See id.* § 730.007(a)(2)(A)(I). Section 730.013 of the Transportation Code provides for purposes of chapter 730 of the Transportation Code:

(a) An authorized recipient of personal information may not resell or redisclose the personal information in the identical or a substantially identical format the personal information was disclosed to the recipient by the applicable agency.

(b) An authorized recipient of personal information may resell or redisclose the information only for a use permitted under Section 730.007.

Id. § 730.013(a), (b). We find the department did not receive the information at issue from an agency that compiles or maintains motor vehicle records for purposes of section 730.013. Accordingly, the department may not withhold any part of the submitted information under section 552.101 of the Government Code in conjunction with section 730.013 of the Transportation Code. *See Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection).*

Section 552.101 of the Government Code also encompasses the doctrines of common-law privacy and constitutional privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of

⁶As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Additionally, this office has found common-law privacy generally protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007(c).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information you have marked that pertains to identified individuals is highly intimate or embarrassing and of no legitimate public interest. Thus, the remaining information you have marked may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the information you have marked, we find you have failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an identified individual's privacy interests for purposes of constitutional privacy. Therefore, the department may not withhold any of the information you have marked under section 552.101 on the basis of constitutional 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[.]”⁷ Gov’t Code § 552.102(a). The Texas Supreme Court 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. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the remaining information, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

Gov’t Code § 552.1175(a)(1), (b). Section 552.1175(b) also applies to the personal cellular telephone number of an individual who falls within the scope of section 552.1175(a), 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). Accordingly, to the extent the information we have marked pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b), the department must withhold the information we have marked under section 552.1175 of the Government Code. However, if the marked telephone number is a cellular telephone number, the department must withhold it under section 552.1175 only if a governmental body does not pay for the cellular telephone service. Conversely, if the officer at issue does not elect to restrict access to his information in accordance with section 552.1175(b), the department may not withhold the information we have marked under section 552.1175. Further, if the

⁷The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

marked telephone number is a cellular telephone number and the telephone service is paid for by a governmental body, the marked telephone number may not be withheld under section 552.1175. In any event, the department has failed to demonstrate the remaining information you have marked pertains to a peace officer, and thus, the department may not withhold the remaining information you have marked under section 552.1175.

You state the department is redacting specific information pursuant to section 552.130 of the Government Code.⁸ However, we note some of the information you have marked is not subject to section 552.130. Further, you have failed to mark some information subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit or motor vehicle title or registration or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, with the exception of the information we have marked for release, which is not information subject to section 552.130, we find the department must withhold the motor vehicle record information you have marked, as well as the information we have marked for withholding under section 552.130 of the Government Code. Additionally, you assert the remaining video recordings contain motor vehicle record information. Upon review, we agree some of the remaining video recordings contain motor vehicle record information. In this instance, you state the department does not possess the technological capability to redact information from video files. Thus, with the exception of the video recording we have marked for release, which does not contain information subject to section 552.130, the department must withhold remaining video recordings in their entirety under section 552.130 of the Government Code. *See* Open Records Decision No. 364 (1983).

In summary, with the exception of basic information, which must be released, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code. With the exception of the information we have marked for release, the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code. The department must withhold under section 552.101 of the Government Code (1) the information we have marked in conjunction with section 261.201 of the Family Code; (2) the information we have marked in conjunction with section 58.007(c) of the Family Code; (3) the information we have marked in conjunction with section 411.083 of the Government Code; (4) the submitted CR-3 accident reports in conjunction with section 550.065(b) of the Transportation Code; and (5) the information we have marked in conjunction with common-law privacy. The department must withhold the date of birth we have marked under section 552.102(a) of the Government Code. The department must withhold the information we have marked under section 552.1175 of the

⁸As previously noted, section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Government Code, to the extent the information we have marked pertains to a peace officer who elects to restrict access to his marked information in accordance with section 552.1175(b); however, if the marked telephone number is a cellular telephone number, the department must withhold it under section 552.1175 only if a governmental body does not pay for the cellular telephone service. With the exception of the information we have marked for release, the department must withhold the information you have marked, as well as the information we have marked for withholding, under section 552.130 of the Government Code. The department must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/akg

Ref: ID# 508846

Enc. Submitted documents

c: Requestor
(w/o enclosures)