



ATTORNEY GENERAL OF TEXAS  
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OR2014-05415

Dear Ms. Brewer:

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# 517225.

The Wylie Police Department (the "department"), which you represent, received three requests from different requestors for information related to a specified case.<sup>1</sup> You claim the department is not required to comply with the requests pursuant to section 552.028 of the Government Code. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.136 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We first address your claim that the department is not required to comply with the instant requests for information. Section 552.028 of the Government Code provides as follows:

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<sup>1</sup>We note the department sought and received clarification from one of the requestors regarding the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); 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).

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028. You claim the department is not required to release information to the requestors pursuant to section 552.028(a)(2) of the Government Code. However, the requestors do not indicate they are acting as agents of an incarcerated individual, and you have not provided any arguments establishing the requestors are, in fact, acting as agents of an incarcerated individual. Therefore, we conclude section 552.028 of the Government Code does not permit the department to decline to comply with these requests.

Next, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not relate to the specified case. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note the responsive information includes a search warrant that was signed by a magistrate. Court-filed documents are expressly public under section 552.022(a)(17) of the Government Code. *Id.* § 552.022(a)(17). Such information must be released unless it is confidential under the Act or other law. Although the department seeks to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and, therefore, does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108).* Therefore, the department may not withhold the court-filed document, which we have marked, under section 552.108. We also understand you to raise section 552.101 in conjunction with common-law privacy for the court-filed document. We note that information that has been filed with a court is not protected by common-law privacy. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). However, we will address your remaining arguments under section 552.101 of the Government Code, as well as your arguments under sections 552.130 and 552.136 of the Government Code, which make information confidential for the purposes of section 552.022, for the court-filed document. We will also address your arguments for the remaining responsive information.

Section 552.108 of the Government Code provides, in relevant 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; [or]

(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; [or]

(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)(1)-(2), (b)(1)-(2). Subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 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 a conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977). You explain the submitted information pertains to a case wherein three defendants were convicted and are currently either on probation or incarcerated and seeking an appeal. Further, the information you have submitted to this office reveals that the conviction of the defendant who is incarcerated was affirmed on December 31, 2009 and that this defendant's writ of habeas corpus filed pursuant to Article 11.07 of the Code of Criminal Procedure was dismissed without order on May 6, 2011. Based on these facts, we find neither the investigation nor prosecution on the matter is pending. *See Houston Chronicle Publ'g Co.*

*v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we find the department may not withhold the responsive information under section 552.108(a)(1) of the Government Code.

Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor). Upon review, we find you have failed to demonstrate how the release of the responsive information would interfere with law enforcement and crime prevention. Accordingly, the department may not withhold the responsive information under section 552.108(b)(1).

A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information relates to a criminal investigation or prosecution that has concluded in a final result other than a conviction or deferred adjudication. As noted above, you state the matter at issue concluded with convictions of three defendants. Consequently, we find you have failed to demonstrate the applicability of subsections 552.108(a)(2) and 552.108(b)(2) to the responsive information; thus, the department may not withhold the responsive information on either of these bases. Accordingly, we conclude the department may not withhold any of the responsive information under section 552.108 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.” Gov’t Code § 552.101. You raise section 552.101 in conjunction with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) for the responsive information. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C.

§ 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We therefore held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the department may not withhold any portion of the information at issue on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practices Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in part, as follows:

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

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded 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). Upon review, we find none of the responsive information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the department may not withhold any of the responsive information under section 552.101 in conjunction with the MPA.

Section 552.101 of the Government Code also encompasses information protected by other statutes, including section 611.002 of the Health and Safety Code, which makes certain mental health record information confidential. Section 611.002 provides in pertinent part the following:

(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). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Upon review, we find none of the information at issue consists of communications between a patient and a professional or records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional. Accordingly, the department may not withhold any of the responsive information under section 552.101 of the Government Code on the basis of section 611.002 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses information protected by section 773.091 of the Health and Safety Code, which provides in part:

(a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or

maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

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(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

*Id.* § 773.091(a)-(b), (g). Thus, except for the information specified in section 773.091(g), EMS records are deemed confidential under section 773.091 and may be released only in accordance with chapter 773 of the Health and Safety Code. *See id.* §§ 773.091-.094.

You argue the responsive information is subject to chapter 773 of the Health and Safety Code. Upon review, we find the information at issue does not consist of communications between certified emergency medical services personnel providing medical supervision and patients that were made in the course of providing emergency medical services to the patients. *See id.* § 773.091(a). Furthermore, the information at issue does not consist of records of the identity, evaluation, or treatment of patients by emergency medical services personnel providing medical supervision that were created by the emergency medical services personnel or maintained by an emergency medical services provider. *See id.* § 773.091(b). Accordingly, we find section 773.091 does not apply to any portion of the responsive information, and the department may not withhold the information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See Gov’t Code* § 411.083(a). 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 laws with respect to the CHRI it generates. *See 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. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *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 obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active

warrant information or other information relating to one's current involvement with 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 portions of the responsive information, which we have marked, consist of CHRI that is confidential under section 411.083. Thus, the department must withhold the information we have marked and indicated under section 552.101 in conjunction with section 411.083 of the Government Code.<sup>2</sup> However, none of the remaining responsive information constitutes confidential CHRI for the purposes of chapter 411. Therefore, the department may not withhold any of the remaining responsive information under section 552.101 in conjunction with section 411.083 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides:

(a) 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 other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

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<sup>2</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

Occ. Code § 1703.306. Upon review, we find portions of the remaining responsive information were acquired from a polygraph examination and are, therefore, within the scope of section 1703.306. Accordingly, the department must withhold this information, which we have marked and indicated, under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.<sup>3</sup> However, you have failed to demonstrate how the remaining responsive information was acquired from a polygraph examination. Thus, the department may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.101 of the Government Code also encompasses article 62.005(b) of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Texas Department of Public Safety sex offender registration database: the person's full name; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; each alias; home, work, or cellular telephone number; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; the identification of any online identifier established or used by the person; and any other information required by the department. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number; driver's license number; home, work, or cellular telephone number; the identification of any online identifier established or used by the person; all information required by the Texas Department of Public Safety outside of the enumerated categories of information including any information regarding an employer's name, address, or telephone number; and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the department must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b).<sup>4</sup>

Section 552.101 of the Government Code also encompasses section 411.192 of the Government Code, which governs the release of all information maintained by the

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<sup>3</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

<sup>4</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

Department of Public Safety concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

(a) The [Department of Public Safety] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, zip code, telephone number, e-mail address, and Internet website address. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

Gov't Code § 411.192(a), (b). The information we have marked pertains to concealed handgun license information that appears to have been received from the Department of Public Safety. In this instance, the requestor is neither a criminal justice agency nor the license holder whose information is at issue. We note section 411.193 is not applicable. *Id.* § 411.193 (making a statistical report including the number of licenses issued, denied, revoked, or suspended by the department during the preceding month available to the public). Therefore, the department must withhold the concealed handgun license information we have marked under section 552.101 in conjunction with section 411.192 of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also encompasses chapter 560 of the Government Code, which provides that a governmental body may not release biometric identifier information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints and records of hand geometry), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under the Act). We note laws making this type of information confidential are intended to protect an individual's privacy. *See id.* § 560.003. Because the right of privacy is purely personal and lapses at death, the fingerprints of a deceased individual may not be withheld on the basis of sections 560.001, 560.002, and 560.003. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.) (right of privacy is purely personal and lapses upon death); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-67 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). We note the remaining

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<sup>5</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

responsive information includes the fingerprints of living individuals. We further note the remaining responsive information includes fingerprints belonging to unidentified individuals. You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the fingerprints at issue. Therefore, to the extent the fingerprint information we have marked and indicated belongs to living individuals, the department must withhold the fingerprint information we have marked and indicated under section 552.101 in conjunction with section 560.003 of the Government Code.<sup>6</sup>

Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In Open Records Decision No. 430 (1985), our office determined a list of inmate visitors is protected by constitutional privacy because people have a First Amendment right to correspond with inmates, and that right would be threatened if their names were released. *See also* Open Records Decision Nos. 428 (1985), 185 (1978) (public's right to obtain an inmate's correspondence list is not sufficient to overcome the First Amendment right of the inmate's correspondents to maintain communication with inmate free of the threat of public exposure). We have determined the same principles apply to an inmate's recorded conversations from a telephone at a jail. Upon review, we find the information we have marked and indicated under section 552.101 of the Government Code in conjunction with constitutional privacy must be withheld.<sup>7</sup>

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 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. This office has also concluded some kinds of medical information are generally highly intimate or embarrassing. *See* ORD 455. Additionally, a compilation

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<sup>6</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

<sup>7</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

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) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, active warrant information or other information relating to an individual's current involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b). We also note that records relating to routine traffic violations are not considered criminal history information. *See id.* § 411.082(2)(B) (criminal history record information does not include driving record information). 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 (employment applicant's salary information not private), 423 at 2 (1984) (scope of public employee privacy is narrow). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy).

Upon review, we find the information we have marked and indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>8</sup> However, we find no portion of the remaining responsive information is highly intimate or embarrassing and of no legitimate concern to the public. Accordingly, no portion of the remaining responsive information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10

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<sup>8</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

S.W.2d 724, 725 (Tex. Crim. App. 1928). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). It protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 at 5 (1990). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege.

You assert the remaining responsive information reveals the identities of individuals who reported a violation of the law to the department. The submitted information indicates the violations at issue carry criminal penalties. We therefore conclude the department may withhold the identifying information we have marked and indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.<sup>9</sup> The remaining responsive information, however, does not identify an individual who initially reported a violation of the law, and the department may not withhold it under section 552.101 in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code 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). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Some of the driver's license information at issue pertains solely to a deceased individual. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. See *Moore*, 589 S.W.2d at 491; see also Attorney General Opinions JM-229, H-917; ORD 272 at 1. Upon review, we find the department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code.<sup>10</sup> However, we find no portion

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<sup>9</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

<sup>10</sup>As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure. 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).

of the remaining responsive information is subject to section 552.130 and the department may not withhold it on that basis.

Section 552.136 of the Government Code provides, “[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); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the department must withhold the information we have marked under section 552.136 of the Government Code.<sup>11</sup> However, you have failed to demonstrate the applicability of section 552.136 to any of the remaining responsive information, and the department may not withhold it on that basis.

We note portions of the remaining responsive information are subject to section 552.1085 of the Government Code, and may be subject to sections 552.117, 552.1175, and 552.137 of the Government Code.<sup>12</sup> Section 552.1085 of the Government Code provides, in pertinent part, the following:

(c) A sensitive crime scene image in the custody of a governmental body is confidential and excepted from the requirements of Section 552.021 and a governmental body may not permit a person to view or copy the image except as provided by this section. This section applies to any sensitive crime scene image regardless of the date that the image was taken or recorded.

*Id.* § 552.1085(c). For purposes of section 552.1085, “sensitive crime scene image” means “a photograph or video recording taken at a crime scene, contained in or part of a closed criminal case, that depicts a deceased person in a state of dismemberment, decapitation, or similar mutilation or that depicts the deceased person’s genitalia.” *See id.* § 552.1085(a)(6). Some of the remaining responsive information consists of photographs that were taken at a crime scene as part of a criminal case that we understand is now closed. Upon review, we find some of these photographs, which we have indicated, consist of sensitive crime scene images which must be withheld under section 552.1085 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 number, social security number, emergency contact information, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. *Id.* § 552.117(a)(2).

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<sup>11</sup>We note section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *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).

<sup>12</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470.

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). To the extent the individuals whose information we have marked and indicated are currently licensed peace officers as defined by article 2.12, and are current or former department employees, the department must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the department may only withhold a cellular telephone number if the cellular telephone service is not paid for by a governmental body.

If the individuals whose information we have marked and indicated are current or former department employees, but are no longer licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then their personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts the same information for a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). 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 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. Therefore, if the individuals at issue are current or former department employees, but are no longer licensed peace officers as defined by article 2.12, then to the extent they timely elected confidentiality under section 552.024, the department must withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code; however, the department may only withhold a cellular telephone number if the cellular telephone service is not paid for by a governmental body. If, however, the individuals at issue did not timely elect to keep their personal information confidential, the information at issue may not be withheld under section 552.117(a)(1).

To the extent section 552.117 is not applicable to the information we have marked and indicated, it may be excepted under section 552.1175. Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, social security number, date of birth, 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. Section 552.1175 applies, in part, to peace officers as defined by Article 2.12, Code of Criminal Procedure and "employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]" *Id.* § 552.1175(a)(1), (5). We note section 552.1175 is also applicable 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 department must withhold the information we have marked and indicated under section 552.1175 if the individuals to whom this information pertains are among the types of individuals listed in section 552.1175(a) and they elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code; however, the department may only withhold a cellular telephone number if the cellular telephone service is not paid for by a governmental body. However, the department may not withhold the information we have indicated under section 552.1175 if the individuals to whom this information pertains are not among the types of individuals listed in section 552.1175(a), or no election is made.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). Upon review, we find the e-mail addresses we have marked and indicated are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked and indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

We note some of the materials at issue may be 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of 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.

In summary, the department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. The department must withhold or release the information subject to article 62.005 of the Code of Criminal Procedure, which we have marked, in accordance with article 62.005(b). The department must withhold the concealed handgun license information we have marked under section 552.101 of the Government Code in conjunction with section 411.192 of the Government Code. To the extent the fingerprint information we have marked and indicated belongs to living individuals, the department must withhold the fingerprint information we have marked and indicated under

section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with constitutional privacy. The department must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the identifying information we have marked and indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The department must withhold the motor vehicle record information we have marked and indicated under section 552.130 of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code. The department must withhold the photographs we have indicated under section 552.1085 of the Government Code. To the extent the individuals whose information we have marked and indicated are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, and are current or former department employees, the department must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code; however, the department may only withhold a cellular telephone number if the cellular telephone service is not paid for by a governmental body. If the individuals whose information we have marked and indicated are current or former department employees, but are no longer licensed peace officers as defined by article 2.12, then to the extent they timely elected confidentiality under section 552.024, the department must withhold the information we have marked and indicated under section 552.117(a)(1) of the Government Code; however, the department may only withhold a cellular telephone number if the cellular telephone service is not paid for by a governmental body. To the extent these individuals are not current or former department employees, we find the department must withhold the information we have marked and indicated under section 552.1175 if the individuals to whom this information pertains are among the types of individuals listed in section 552.1175(a) and they elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code; however, the department may only withhold a cellular telephone number if the cellular telephone service is not paid for by a governmental body. The department must withhold the personal e-mail addresses we have marked and indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The department must release the remaining responsive information; however, any information subject to copyright may only be released in accordance with copyright law.<sup>13</sup>

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.

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<sup>13</sup>We note the information being released contains the social security numbers of living individuals. 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* Gov't Code § 552.147(b).

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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 517225

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)