



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 17, 2015

Ms. Kelley Messer  
Assistant City Attorney  
City of Abilene  
P.O. Box 60  
Abilene, Texas 79604-0060

OR2015-07504

Dear Ms. Messer:

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# 558639.

The Abilene Police Department (the "department") received a request for all reports pertaining to officer involved shootings resulting in injury or death from January 1, 2004 to the date of the request. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted information relates to closed criminal cases of the department and the Texas Rangers (the "Rangers") that did not result in

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<sup>1</sup>Although you raise section 552.151 of the Government Code, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. *See* Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

conviction or deferred adjudication. We have also received representation from the Rangers seeking to withhold report numbers 12-014255, 12-122735, 14-17747, 14-17988, and 14-17758 under section 552.108(a)(2) because these reports pertain to its closed criminal investigations that did not result in conviction or deferred adjudication. Based on these representations and our review, we agree section 552.108(a)(2) is applicable to the information related to report numbers 12-014255, 12-122735, 14-17747, 14-17988, and 14-17758. However, report number 08-000410 resulted in a conviction of the individual investigated by the department. Further, the Rangers do not object to the release of report number 08-000410. Thus, we find you have failed to demonstrate the applicability of section 552.108(a)(2) to report number 08-000410, and the department may not withhold this information on that basis.

We note, 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. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic information, the department may withhold the information related to report numbers 12-014255, 12-122735, 14-17747, 14-17988, and 14-17758 under section 552.108(a)(2) 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>2</sup> Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have indicated satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain

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<sup>2</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. 481,480 (1987), 470 (1987).

individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the remaining information pertains to peace officers and is held by the department in a non-employment capacity. Thus, if the information we marked and indicated pertains to currently licensed peace officers and the officers elect to restrict access to their information in accordance with section 552.1175(b), then the department must withhold the information at issue under section 552.1175 of the Government Code. However, if the individuals whose information we marked and indicated are no longer licensed peace officers or no elections are made, then the department may not withhold this information under section 552.1175.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a). Therefore, the department must withhold the information we have marked and indicated and any other discernable license plate numbers under section 552.130 of the Government Code.

Section 552.152 provides:

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

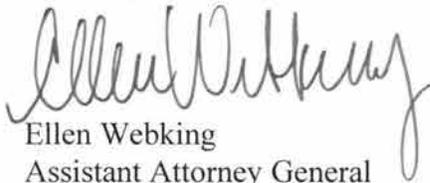
*Id.* § 552.152. Upon review, we find you have not demonstrated release of any of the remaining information would subject an employee or officer to a substantial risk of physical harm. Accordingly, the department may not withhold any portion of the remaining information under section 552.152 of the Government Code.

In summary, with the exception of basic information, which must be released, the department may withhold the information related to report numbers 12-014255, 12-122735, 14-17747, 14-17988, and 14-17758 under section 552.108(a)(2) of the Government Code. The department must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. If the information we marked and indicated pertains to a currently licensed peace officer and the officer elects to restrict access to his information in accordance with section 552.1175(b), then the department must withhold the information at issue under section 552.1175 of the Government Code. The department must withhold the information we have marked and indicated and any other discernable license plate numbers under section 552.130 of the Government Code. The remaining information must be released.

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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/akg

Ref: ID# 558639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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