



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 25, 2015

Ms. Lisa D. Mares
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2015-17689

Dear Ms. Mares:

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# 577373.¹

The City of McKinney and the McKinney Police Department (collectively, the "city"), which you represent, received eighty-nine requests from sixty-two different requestors for information relating to a specified incident and a named officer involved in the incident.²

¹ORR# 15-16244, 15-16245, 15-16246, 15-16247, 15-16248, 15-16250, 15-16251, 15-16253, 15-16254, 15-16258, 15-16260, 15-16261, 15-16262, 15-16263, 15-16264, 15-16265, 15-16266, 15-16271, 15-16272, 15-16273, 15-16277, 15-16278, 15-16281, 15-16282, 15-16283, 15-16284, 15-16285, 15-16286, 15-16302, 15-16303, 15-16304, 15-16305, 15-16309, 15-16314, 15-16317, 15-16318, 15-16321, 15-16322, 15-16323, 15-16325, 15-16328, 15-16331, 15-16332, 15-16333, 15-16334, 15-16335, 15-16336, 15-16337, 15-16337, 15-16339, 15-16340, 15-16341, 15-16342, 15-16343, 15-16344, 15-16345, 15-16346, 15-16347, 15-16350, 15-16351, 15-16353, 15-16354, 15-16355, 15-16357, 15-16358, 15-16359, 15-16360, 15-16361, 15-16362, 15-16363, 15-16364, 15-16366, 15-16367, 15-16371, 15-16372, 15-16373, 15-16378, 15-16379, 15-16381, 15-16394, 15-16426, 15-16427, 15-16434, 15-16465, 15-16466, 15-16468, 15-16473, 15-16480, 15-16622, 15-16744, and 15-16952.

²We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We also note the city has withdrawn its request for a ruling for ORR# 15-16622 because the requestor withdrew this request.

The city states it has released some of the requested information in accordance with a previous ruling. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). The city states it does not have information responsive to some of the requests.³ The city informs us it will redact information pursuant to sections 552.1175(f),⁴ 552.136(c),⁵ and 552.147(b)⁶ of the Government Code and Open Records Decision No. 684 (2009).⁷ The city claims the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information, some of which consists of representative samples of information.⁸

Initially, we note some of the requestors ask the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the city has made a good-faith effort to do so.

³The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

⁴Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, dates of birth, social security number, and family member information of certain individuals who properly elect to keep this information confidential. *See* Gov't Code § 552.1175(b), (f). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *See id.* § 552.1175(g), (h).

⁵Section 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).

⁶Section 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 under the Act. Gov't Code § 552.147(b).

⁷Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion.

⁸We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (17). The submitted information includes completed investigations and completed evaluations that are subject to section 552.022(a)(1). The city must release the completed investigations and evaluations pursuant to section 552.022(a)(1), unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). Some of the submitted information also consists of court-filed documents that are subject to section 552.022(a)(17). The city must release this information pursuant to section 552.022(a)(17), unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(17). Although the city raises section 552.103 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold any of the information subject to section 552.022, which we have marked, under section 552.103. Further, although the city raises section 552.101 of the Government Code in conjunction with common-law privacy for the court-filed documents, we note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (law cannot recall information once in public domain). Thus, the city may not withhold any portion of the court-filed documents under section 552.101 in conjunction with common-law privacy. However, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we will address the city's assertion of section 552.108 for the information at issue. Additionally, because sections 552.101, 552.117, and 552.130 of the Government Code make information confidential for purposes of section 552.022, we will address their applicability to the information subject to section 552.022. We will also address the city's arguments against disclosure of the remaining information.

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[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) 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). 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). The city states, and provides documentation demonstrating, the information in Exhibits B, E, F-1, F-2, and F-3 relates to open and ongoing criminal investigations by the city’s police department and the Texas Rangers. The city has submitted a representation from the Texas Rangers objecting to the release of information relating to the investigation at issue. Upon review, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *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, section 552.108(a)(1) is applicable to the information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other things, an identification and description of the complainant, but does not include the complainant’s date of birth, or the complainant’s telephone number or home address, unless the address is the location of the crime. *See* ORD 127 at 3-4. Additionally, basic information does not include the identities of victims or witnesses who are not also complainants. *Id.* Thus, with the exception of basic information, the city may withhold the information in Exhibits B, E, F-1, F-2, and F-3 under section 552.108(a)(1) of the Government Code.⁹

Section 552.103 of the Government Code provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

⁹As our ruling is dispositive, we need not address the city’s remaining arguments, including its argument under section 552.103 of the Government Code, except to note that the basic information held to be public in *Houston Chronicle* is generally not excepted from disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. See Open Records Decision No. 452 at 4 (1986). To demonstrate litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, an attorney for a potential opposing party making a demand for payment and asserting an intent to sue if such payments are not made. Open Records Decision Nos. 555 at 3 (1990), 346 (1982). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party threatened to sue on several occasions and hired an attorney. See Open Records Decision No. 288 at 2 (1981). However, an individual publicly threatening to bring suit against a governmental body, but who does not actually take objective steps toward filing suit, is not concrete evidence that litigation is reasonably anticipated. See Open Records Decision No. 331 at 1-2 (1982).

The city states it reasonably anticipated litigation when it received the request for information because city police officers were involved in the injuries of six minor children during the incident at issue. Based on the representations of the city, our review of the submitted documents, and the totality of circumstances, we find the city has demonstrated it reasonably anticipated litigation when it received the request for information. We also find the city has established the information at issue in Exhibits D-1 and D-2 is related to the anticipated litigation for purposes of section 552.103(a). Therefore, we agree the city may withhold the

information not subject to section 552.022 of the Government Code in Exhibits D-1 and D-2 under section 552.103(a).¹⁰

However, once the information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. See Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. See *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, we determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. See Open Records Decision No. 631 at 3 (1995). Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152, 157 (Tex. App.—Austin 2001, no pet.); see ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, section 552.111 protects the factual information. See Open Records Decision No. 313 at 3 (1982).

The city states the information in Exhibit G consists of advice, opinions, and recommendations relating to the city’s policymaking. However, we note the information at issue pertains to personnel matters concerning only the individual at issue. The city has not demonstrated how this information involves policymaking pertaining to personnel matters

¹⁰As our ruling is dispositive, we need not address the city’s remaining arguments against disclosure of this information.

of a broad scope. Therefore, the city may not withhold the information in Exhibit G under section 552.111 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. Section 552.101 encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI 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). Upon review, we find the information we have marked constitutes confidential CHRI. This information must be withheld 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 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). 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.

Fam. Code § 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 id. § 51.02(2). Upon review, we conclude the information we have marked consists of law enforcement records involving juvenile delinquent conduct or conduct indicating a need for supervision occurring after September 1, 1997, and is, therefore, subject to section 58.007(c). *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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. However, the remaining information at issue consists of internal affairs investigation records. Records of an internal affairs investigation do not constitute juvenile law enforcement records for the purposes of section 58.007(c) of the Family Code. Therefore, the city may not withhold this information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses chapter 611 of the Health and Safety Code. Section 611.002 provides in pertinent part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b). 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 the information we have marked consists of a mental health record for purposes of chapter 611 of the Health and Safety Code. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 611 of the Health and Safety Code.

Section 552.101 of the Government Code also 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). 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. 600 (1992) (personal financial

information includes choice of particular insurance carrier), 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). 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 city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city has failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the city may not withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

The city claims the basic information in Exhibit F-3 is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a separate common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

The city argues the basic information in Exhibit F-3 is confidential under the common-law physical safety exception because a very real risk of harm could result from its disclosure. The complainants at issue have received many threats, including death threats, as a result of their involvement in the incident at issue and the city states they have had to temporarily relocate. Upon review, we find the city has demonstrated that release of the complainants' names and addresses in the basic information in Exhibit F-3 would create a substantial threat of physical harm to the individuals at issue. Accordingly, the city must withhold the complainants' names and addresses from the basic information in Exhibit F-3 under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. However, the city has not demonstrated release of any of the remaining basic information at issue would subject anyone to a specific risk of harm. Accordingly, the city may not withhold any of the remaining basic information in Exhibit F-3 under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

The city states it will redact information subject to section 552.117(a)(1) of the Government Code pursuant to section 552.024(c) of the Government Code.¹¹ We note some of the

¹¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

remaining information is also subject to section 552.117(a)(1). Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information it has marked, as well as the information we have marked and indicated, under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employee whose information is at issue did not timely request confidentiality under section 552.024, the city may not withhold this information under section 552.117(a)(1).

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with section 552.024 or 552.1175 of the Government Code.¹² Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code.

The city states it will redact motor vehicle record information pursuant to section 552.130(c) of the Government Code.¹³ However, we note some of the remaining information is subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator's or 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. *Id.* § 552.130(a). Upon review, we find the city must withhold the motor vehicle record information it has marked, we have marked and indicated, and the discernible license plate numbers in the remaining video recordings under section 552.130 of the Government Code.

¹²Section 552.117(a)(2) adopts the definition of peace officer found in article 2.12 of the Code of Criminal Procedure.

¹³We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 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).

In summary, with the exception of basic information, the city may withhold the information in Exhibits B, E, F-1, F-2, and F-3 under section 552.108(a)(1) of the Government Code. The city may withhold the information not subject to section 552.022 of the Government Code in Exhibits D-1 and D-2 under section 552.103(a) of the Government Code. The city 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, section 58.007 of the Family Code, chapter 611 of the Health and Safety Code, and common-law privacy. The city must withhold the complainants' names and addresses from the basic information in Exhibit F-3 under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. To the extent the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the city must withhold the information it has marked, as well as the information we have marked and indicated, under section 552.117(a)(1) of the Government Code. The city must withhold the information we have marked and indicated under section 552.117(a)(2) of the Government Code. The city must withhold the motor vehicle record information it has marked, we have marked and indicated, and the discernible license plate numbers in the video recordings at issue under section 552.130 of the Government Code. The city must release the remaining information.¹⁴

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/bhf

¹⁴We note the information being released contains social security numbers. 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).

Ref: ID# 577373

Enc. Submitted documents

c: Requestors
(w/o enclosures)