



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 20, 2018

Ms. P. Armstrong  
Assistant City Attorney  
City of Dallas  
1400 South Lamar, 6th Floor, 6W  
Dallas, Texas 75215

OR2018-09245

Dear Ms. Armstrong:

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# 704387 (ORR Nos. D002162-013118; D002199-13118; D002200-13118; D002231-020118; D002279-020118; D002331-020218; D003578-022018; D003709-022118; D003727-022118; and D004269-022818).

The Dallas Police Department (the "department") received ten requests from seven different requestors for information pertaining to a specified incident. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.1085, 552.117, 552.1175, 552.130, 552.136, 552.137, 552.139, and 552.147 of the Government Code. Further, the department states release of the information at issue may implicate the privacy interests of the deceased individuals' families. Accordingly, the department states it notified the family members of the requests for information and of their right to submit arguments to this office as to why the information at issue should not be released. Additionally, the department states it has notified Dallas Area Rapid Transit ("DART") of the request pursuant to section 552.304 of the Government Code. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why

requested information should or should not be released). We have received comments from a family member of a deceased individual, a representative of some of the deceased individuals' family members, and DART. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the information we have indicated is not responsive to some of the instant requests for information because it was created after the date the department received the requests at issue. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to the requests for information we have indicated.

Next, we note some of the submitted responsive information was previously released in response to a previous request for information. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 102 (1987). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, pursuant to section 552.007, the department may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. *See Open Records Decision No. 400* (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Although you raise section 552.103 of the Government Code for this information, we note this exception does not expressly prohibit release of the information at issue or make information confidential. *See Gov't Code* § 552.007; Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the department may not withhold the information at issue under section 552.103. However, because section 552.101 of the Government Code can make information confidential under the Act, we will consider its applicability to the information at issue. Furthermore, we will consider the exceptions to disclosure the department raises for the submitted responsive information that has not been previously released.

Next, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

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<sup>1</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, some of the requestors do not provide the requisite information under section 1701.661(a). As the body worn camera recordings at issue were not properly requested by these requestors pursuant to chapter 1701, our ruling does not reach this information as to these requestors and it need not be released to them.<sup>2</sup> However, pursuant to section 1701.661(b), a “failure to provide all the information required by [s]ubsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.” *Id.* § 1701.661(b). As the remaining requestors did provide the requisite information under section 1701.661(a), we will address your arguments for the body worn camera recordings as to the remaining requestors.

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 information at issue relates to a closed case that did not result in conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

However, 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* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, a sufficient portion of the narrative to include a detailed description of the charged offense. *See* ORD 127 at 3-4. Thus, with the exception of basic

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<sup>2</sup>As we are able to make this determination, we need not address your argument against disclosure of the information at issue with respect to these requestors.

information, the department may withhold the information you marked under section 552.108(a)(2) of the Government Code.<sup>3</sup>

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 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. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate any of the remaining information you marked is highly intimate or embarrassing and not of legitimate concern to the public. Therefore, none of the remaining responsive information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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”). You state the employee identification numbers you marked also serve as access device numbers. Accordingly, the department must withhold the remaining information you marked under section 552.136 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147(a). We note the information at issue consists of a deceased individual’s social security number. Because the right of privacy lapses at death, social security numbers of deceased individuals may not be withheld under section 552.147. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). Accordingly, the decedent’s social security number may not be withheld under section 552.147 of the Government Code.

In summary, as some of the requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information, and the department need not release the submitted body camera

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<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

recordings in response to the requests we have indicated. With the exception of basic information, the department may withhold the information you marked under section 552.108(a)(2) of the Government Code. The department must withhold the remaining information you marked under section 552.136 of the Government Code. The department must release the remaining responsive information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/gw

Ref: ID# 704387

Enc. Submitted documents

c: 7 Requestor  
(w/o enclosures)

c: 2 Third Parties  
(w/o enclosures)



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 7, 2016

Ms. P. Armstrong  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

Ms. Josi Diaz  
Assistant City Attorney  
Criminal Law and Police Section  
City of Dallas  
1400 South Lamar  
Dallas, Texas 75215

OR2016-22655

Dear Ms. Armstrong and Ms. Diaz:

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# 627533 (Dallas ORR Nos. 2016-14971, 2016-14974, 2016-14975, 2016-14976, 2016-14977, 2016-14978, 2016-14979, 2016-14980, 2016-14981, 2016-15221, 2016-15222, 2016-15223, 2016-15224, 2016-15225, 2016-15226, 2016-15227, 2016-15228, 2016-15229, 2016-15230, 2016-15231, 2016-15252, 2016-15253, 2016-15254, 2016-15255, 2016-15257, 2016-15258, 2016-15259, 2016-15260, 2015-15262, 2016-15263, 2016-15264, 2016-15265, 2016-15266, 2016-15267, 2016-15268, 2016-15269, 2016-15270, 2016-15271, 2016-15272, 2016-15273, 2016-15274, 2016-15275, 2016-15276, 2016-15436, 2016-15437, 2016-15438, 2016-15439, 2016-15440, 2016-15441, 2016-15442, 2016-15443, 2016-15444, 2016-15445, 2016-15446, 2016-15447, 2016-15448, 2016-15449, 2016-15450, 2016-15451, 2016-15452, 2016-15453, 2016-15454, 2016-15455, 2016-15456, 2016-15457, 2016-15458, 2016-15459, 2016-15460, 2016-15461, 2016-15462, 2015-15463, 2016-15464, 2016-15465, 2016-15511, 2016-15512, 2016-15630, 2016-15625, 2016-15626, 2016-15627, 2016-15628, 2016-15629, 2016-15699, 2016-15734, 2016-15831, 2016-16166, 2016-16799, 2016-17206, 2016-17286,

2016-17287, 2016-17288, 2016-19750, 16-00342753, 16-00342768, 16-00342775, 16-00342781, 16-00345425, 16-00347427, 16-00352264, 16-00361497).

The City of Dallas and Dallas Police Department (collectively, the “city”) received ninety-eight requests from numerous requestors for (1) information pertaining to a specified incident resulting in the deaths of four city police officers and involving the use of a bomb-defusing robot; (2) threats made, and complaints of racial discrimination filed, against the city during a specified time frame; (3) information regarding use of force or wrongful death incidents during a specified time frame; (4) information regarding the bomb-defusing robot used during the specified incident; (5) communications sent to or from city staff during a specified time frame; (6) the personnel files and disciplinary records of named officers; (7) information regarding the use of specified armored vests; (8) information regarding a specified shooting range; (9) information regarding training exercises scheduled in the city during a specified time frame; (10) information regarding the firearms used in the specified incident; (11) open records requests submitted to the city during a specified time frame; and (12) information regarding items seized from a specified residence.<sup>1</sup> You state you have withdrawn your requests regarding Dallas ORR Nos. 2016-14977, 2016-15227, 2016-15228, 2016-15274, 2016-15439, 2016-15443, and 2016-15460, as the city does not have information responsive to those requests or is releasing the requested information to those requestors.<sup>2</sup> You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.108, 552.117, 552.1175, 552.130, 552.136, 552.137, 552.139, 552.140, 552.147, and 552.152 of the Government Code.<sup>3</sup> You also state release of this information may implicate the proprietary interests of Remotec, Inc.

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<sup>1</sup>We note the city sought and received clarification of some of the requests from the requestors. See Gov’t Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). We also note one of the requestors asks the city to answer factual 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.

<sup>2</sup>The 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).

<sup>3</sup>Although you do not raise sections 552.130 and 552.147 of the Government Code in your brief, we understand you to assert these exceptions based on your markings. Further, although you do not cite to sections 552.140 and 552.152 of the Government Code in your brief, we understand you to raise these exceptions based on the substance of your arguments. Finally, although you also raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

("Remotec"). Accordingly, you state, and provide documentation showing, you notified Remotec of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Remotec stating the company does not object to release of its information. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup> We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, is not responsive to the requests because it does not fall into any of the categories of information requested. This ruling does not address the public availability of any information that is not responsive to the requests and the city is not required to release such information in response to these requests.<sup>5</sup>

Next, we note the submitted information contains peace officers' Texas Commission on Law Enforcement ("TCOLE") identification numbers. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

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<sup>4</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>5</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the TCOLE website. Accordingly, we find the officers' TCOLE identification numbers in the submitted information do not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification numbers are not subject to the Act and need not be released to the requestors.

Next, we note the submitted information includes police officers' body worn camera recordings. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, some of the requestors who requested the body worn camera recordings do not give the requisite information under section 1701.661(a). As these requestors did not properly request the body worn camera recordings at issue pursuant to chapter 1701, our ruling does not reach this information with respect to them and they need not be released to these requestors.<sup>6</sup> However, pursuant to section 1701.661(b), a "failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor[s] from making a future request for the

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<sup>6</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information with respect to the requestors who did not give the requisite information under section 1701.661(a).

same recorded information.” *Id.* § 1701.661(b). With regard to the requestors who did give the requisite information under section 1701.661(a), we will consider your arguments against disclosure of this information.

Further, we note you have submitted a representative sample of information responsive to only some portions of the requests. You have not submitted any information responsive to the remaining portions of the requests seeking information regarding a specified shooting range, information regarding training exercises scheduled in the city during a specified time frame, floor plans and architectural drawings of a specified building, or blueprints for a specified area. Although you state you have submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestors seek access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the city to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov’t Code § 552.302. Therefore, to the extent information responsive to the remaining portions of the requests existed and was maintained by the city on the date it received the requests, we assume the city has released it to the requestors. If the city has not released any such information, it must do so at this time. *Id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Additionally, you acknowledge, and we agree, the city did not comply with the procedural requirements of section 552.301 of the Government Code with respect to some of the submitted responsive information. *See* Gov’t Code § 552.301(b), (e). A governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The city claims section 552.108 of the Government Code for some of this information. However, this exception is discretionary in nature. It serves to protect a governmental body’s interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the city may not withhold any of the information at issue under section 552.108 based on its own law enforcement interest. However, the need of a governmental body other than

the agency that is seeking an open records decision to withhold information under section 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. *See* Open Records Decision No. 586 at 3 (1991). Because you inform us, and provide documentation showing, the Dallas County District Attorney's Office (the "district attorney's office") objects to the release of the information at issue, we will consider whether the city may withhold the information at issue under section 552.108 on behalf of the district attorney's office. Furthermore, the city also claims sections 552.101, 552.102, 552.117, 552.1175, 552.130, 552.136, 552.140, and 552.152 of the Government Code for the information at issue.<sup>7</sup> These sections can make information confidential for purposes of the Act and, thus, provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of these sections to the information at issue.

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. This exception encompasses information protected by other statutes, including section 418.176 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 provides, in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1)-(2). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). You state the information you have marked "pertains to the operating procedures and devices used by the Homeland Security and Special Operations Division and is integral to the city's plan to prevent, detect, investigate,

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<sup>7</sup>We note Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

and respond to any report of terrorism or other related criminal activity.” Upon review, we find some of the information at issue was collected, assembled, or maintained for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and relates to the staffing requirements of an emergency response provider or to a tactical plan of the provider. Therefore, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.<sup>8</sup> However, we find the city has failed to demonstrate the applicability of section 418.176 to the remaining information, and the city may not withhold it under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term “return information” as follows:

a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]

26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Upon review, we find the submitted W-4 form constitutes confidential tax return information under section 6103(a). Accordingly, the city must withhold the W-4 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses information made confidential by section 560.003 of the Government Code, which states, “A biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” Gov’t Code § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). 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

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<sup>8</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

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, 491 (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). The remaining information contains fingerprints of living individuals subject to section 560.003. There is no indication any of the requestors have a right of access to the fingerprints under section 560.002. *See Gov't Code § 560.002(1)(A)* (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. However, we find no portion of the remaining information contains information subject to section 560.003 of the Government Code, and the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. *See Fam. Code § 58.007(c)*. Section 58.007 provides, in relevant part, the following:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

*Id.* Upon review, we find some of the remaining information involves alleged juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (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), .03(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). The exceptions in section 58.007 do not appear to apply. Therefore, the city

must withhold the information you have marked and we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part, the following:

(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.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those 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 at 3-4 (1988), 370 at 2 (1983), 343 at 1 (1982). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 at 1 (1990). Upon review, we find the information we have marked is confidential under the MPA. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find the city has not demonstrated any of the remaining information at issue is confidential under the MPA. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

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

(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.

...

(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.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), emergency medical services records are deemed confidential under section 773.091. Upon review, we find you have failed to demonstrate the applicability of section 773.091(b) to the remaining information. Consequently, the remaining information is not confidential under section 773.091(b) of the Health and Safety Code, and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(a) 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: (1) 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 explain how and why the release of the information at issue 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, 710 (Tex. 1977). You state the information you have marked relates to a pending criminal investigation or prosecution. Additionally, you provide representations from the district attorney’s office and Dallas Area Rapid Transit stating the information at issue relates to pending criminal investigations. Based on these representations, 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) is applicable to this information. Accordingly, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>9</sup>

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). The doctrine of common-law privacy protects a compilation

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<sup>9</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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 individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. 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. *Cf. Gov't Code § 411.081(b)* (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system).

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 excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600* (1992) (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and 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), 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). In addition, this office has held common-law privacy protects the identity of a juvenile offender. *See Open Records Decision No. 394* (1983); *cf. Fam. Code § 58.007(c)*. Further, in *Open Records Decision No. 393* (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *ORD 393 at 2; see Open Records Decision No. 339* (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information).

In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy

interest substantially outweighed the negligible public interest in disclosure.<sup>10</sup> *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. However, because "the right of privacy is purely personal[.]" that right "terminates upon the death of the person whose privacy is invaded[.]" *Moore*, 589 S.W.2d at 491.

Upon review, we find some of the remaining information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor in Dallas ORR No. 2016-17206 has a right of access to otherwise private information related to herself. See Gov't Code § 552.023; see Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, under section 552.101 of the Government Code in conjunction with common-law privacy, the city must withhold (1) the identifying information of the sexual assault victim you have marked and indicated and we have marked and indicated, (2) the information we have marked, and (3) the remaining dates of birth of living identifiable public citizens; however, the city must release the date of birth belonging to the requestor in Dallas ORR No. 2016-17206 to that requestor. However, we find the remaining information you have marked pertains to an individual's current involvement in the criminal justice system, individuals who have been de-identified, or deceased individuals. This information is not highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold the remaining information you have marked under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. See *Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identity of a person who has reported 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. See Open Records Decision No. 208 at 1-2 (1978). The informer's privilege protects the identity of an individual who has reported violations of statutes to the police or similar law-enforcement agencies, as well as an individual who has reported 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 1-2 (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 (1988). Upon review, we find you have not demonstrated any of the remaining information identifies an individual who made a report of a violation of any law for purposes

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<sup>10</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

of the informer's privilege. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

As noted above, section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). However, section 552.102 is designed to protect the privacy of individuals, and the right to privacy expires at death. *See Moore*, 589 S.W.2d at 491. Upon review, we find the information you have marked under section 552.102 pertains to individuals who are deceased. Further, we find no portion of the remaining information pertaining to living individuals is subject to section 552.102(a) of the Government Code. Accordingly, the city may not withhold any of the remaining information on that basis.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Finally, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was "not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must

explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the responsive information you have marked consists of communications between city attorneys and other city employees and officials. You state the communications were made for the purpose of facilitating the rendition of professional legal services to the city and these communications have remained confidential. Upon review, we find you have demonstrated the applicability of the attorney-client privilege to the responsive information you have marked. Thus, the city may withhold the responsive information you have marked under section 552.107(1) of the Government Code.

Section 552.117(a)(4) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of a peace officer who was killed in the line of duty, regardless of whether the deceased complied with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(4). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We also note a post office box number is not a "home address" for purposes of section 552.117(a). *See Open Records Decision No. 622 at 4 (1994)* (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed at home). We note section 552.117 does not apply to information related to divorce, dates of birth, or information not held by the city in an employment context. Upon review, we find you have failed to demonstrate section 552.117(a)(4) is applicable to some of the information you have marked. Therefore, the city may not withhold this information under section 552.117(a)(4). Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked and we have marked for withholding that pertains to peace officers killed in the line of duty under section 552.117(a)(4) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service.<sup>11</sup>

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See Gov't Code § 552.117(a)(2)*. Again,

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<sup>11</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

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* ORD 506 at 5-6. As noted above, a post office box number is not a “home address” for purposes of section 552.117(a). *See* ORD 622 at 4. As also noted above section 552.117 does not apply to information related to divorce, dates of birth, or information not held by the city in an employment context. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the cellular telephone service was not paid for by a governmental body, the city must withhold the cellular telephone numbers you have marked and we have marked under section 552.117(a)(2) of the Government Code.<sup>12</sup> However, if the cellular telephone service was paid for by a governmental body, then the city may not withhold the marked cellular telephone numbers under section 552.117(a)(2). We find you have failed to demonstrate section 552.117(a)(2) is applicable to the remaining information you have marked. Therefore, the city may not withhold this information under section 552.117(a)(2).

Section 552.117(a)(1) of the Government Code 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). Again, 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* ORD 506 at 5-6. As noted above, a post office box number is not a “home address” for purposes of section 552.117(a). *See* ORD 622 at 4. As also noted above section 552.117 does not apply to information related to divorce, dates of birth, or information not held by the city in an employment context. 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. Upon review, we find you have failed to demonstrate some of the individuals whose information you have marked are current or former employees or officials of a governmental body for purposes of section 552.117(a)(1). Therefore, the city may not withhold this information under section 552.117. However, if the individuals who are current or former employees or officials of the city timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, then, with the exception of the information we have marked for release, the city must withhold the cellular telephone numbers you have marked and we have marked under section 552.117(a)(1) of the Government Code.<sup>13</sup> Conversely, if the

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<sup>12</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

<sup>13</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

individuals did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, then the city may not withhold this information under section 552.117(a)(1). We find you have failed to demonstrate section 552.117(a)(1) is applicable to the remaining information you have marked. Therefore, the city may not withhold this information under section 552.117(a)(1).

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential.<sup>14</sup> Gov't Code § 552.1175(b). Section 552.1175 applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. *Id.* § 552.1175(a)(1). Section 552.1175 also encompasses a personal cellular telephone or pager number, unless the cellular telephone or pager service is paid for by a governmental body. *See* ORD 506 at 5-6. Furthermore, a post office box number is not a "home address" for purposes of section 552.1175. *See* ORD 622 at 4. Additionally, section 552.1175 does not apply to information related to divorce or information the city holds in an employment context. Thus, to the extent the individuals whose information we have marked elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service.<sup>15</sup> If no election is made, then the city may not withhold this information under section 552.1175 of the Government Code. However, we find you have failed to demonstrate section 552.1175 is applicable to the remaining information you have marked. Therefore, the city 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* Gov't Code § 552.130(a). Section 552.130 protects personal privacy and, as noted above, the right of privacy lapses at death. *See Moore*, 589 S.W.2d at 491. Therefore, motor vehicle record information that pertains solely to a deceased individual may not be withheld under section 552.130. Some of the information you have marked does not consist of motor vehicle record information or relates solely to deceased individuals. Therefore, the city may not withhold this information under section 552.130 of the Government Code. Thus, with the exception of the information we have marked for release, the city must withhold the remaining motor vehicle record

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<sup>14</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>15</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

information you have marked and the information we have marked and indicated for withholding under section 552.130 of the Government Code.

Section 552.136 of the Government Code states “[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). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). You also inform us the network user names and employee identification numbers you have marked are used as access device numbers. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked and we have marked under section 552.136 of the Government Code. However, the remaining information is not confidential under section 552.136, and the city may not withhold it on that ground.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note section 552.137(c) provides section 552.137(a) does not apply to an e-mail address provided to a governmental body by a person who has or seeks a contractual relationship with the governmental body or by the contractor’s agent, an institutional e-mail address, an Internet website address, the general e-mail address of a business, or an e-mail address a governmental entity maintains for one of its officials or employees. *Id.* § 552.137(c). Further, in *Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.), the court concluded section 552.137 does not except from disclosure the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *See Austin Bulldog*, 490 S.W.3d at 250. Section 552.137 protects personal privacy and because, as noted above, the right to privacy lapses at death, the e-mail address of a deceased individual may not be withheld under section 552.137 of the Government Code. *See Moore*, 589 S.W.2d at 491. Upon review, we find some of the information you have marked does not consist of a personal e-mail address for purposes of section 552.137 or is subject to subsection (c). Therefore, with the exception of the information we have marked for release, the city must withhold the personal e-mail addresses you have marked and the information we have marked for withholding under section 552.137 of the Government Code, unless they are excluded by subsection (c) or the owners affirmatively consent to their public disclosure.

Section 552.139 of the Government Code provides, in relevant part, the following:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a), (b)(1)-(2). You state the information you have marked relates to the city network's secure location for the e-mail accounts of city personnel. You further state release of this information could result in the breach of the network's security. Upon review, we find the information at issue relates to computer network security. *See id.* § 552.139(a). Therefore, the city must withhold the information you have marked under section 552.139 of the Government Code.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). We note the city came into possession of one of the forms after September 1, 2003. Accordingly, the city must withhold this information, which we have marked, under section 552.140 of the Government Code. You do not inform us when the city came into possession of the remaining submitted DD-214 form. Therefore, we must rule conditionally. If the city came into possession of this form on or after September 1, 2003, then the city must withhold this form, which we have marked, under section 552.140 of the Government Code. If the city received this form before September 1, 2003, then the city may not withhold this form pursuant to section 552.140 of the Government Code.

Section 552.152 of the Government Code 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. You state some of the remaining information contains the identifying information of undercover officers and release of the identifying information of these undercover officers would subject the officers to a substantial threat of physical harm. Therefore, we find section 552.152 of the Government Code is applicable to this information, which you have marked and indicated. Accordingly, the city must withhold the information pertaining to undercover officers, which you have marked and indicated, under section 552.152 of the Government Code.<sup>16</sup>

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” *Id.* § 552.108(b)(1). 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 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why the release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to 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. Open Records Decision No. 409 at 2 (1984).

You argue the remaining information you have marked “pertains to the operating procedures and devices used by the Homeland Security and Special Operations Division and is integral to the city’s plan to prevent, detect, investigate, and respond to any report of terrorism or other related criminal activity.” Upon review, we find you have not demonstrated any of the remaining information at issue would interfere with law enforcement or crime prevention.

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<sup>16</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

Accordingly, the city may not withhold any of the remaining information you have marked under section 552.108(b)(1) of the Government Code.

We also understand you to claim some of the remaining information is protected under the common-law physical safety exception. Section 552.101 of the Government Code also encompasses the common-law physical safety exception. For many years, this office determined section 552.101, in conjunction with the common-law right to privacy, protected information from disclosure when “special circumstances” exist in which the disclosure of information would place an individual in imminent danger of physical harm. *See* Open Records Decision Nos. 169 (1977) (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution), 123 (1976) (information protected by common-law right of privacy if disclosure presents tangible physical danger). However, the Texas Supreme Court has held freedom from physical harm does not fall under the common-law right to privacy. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 117 (Tex. 2011) (holding “freedom from physical harm is an independent interest protected under law, untethered to the right of privacy”). Instead, in *Cox*, the court recognized, for the first time, a separate common-law physical safety exception to required disclosure that exists independent of the common-law right to privacy. *Id.* at 118. 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. You argue release of the remaining information you have marked would jeopardize officer safety. Upon review, we find the city has failed to demonstrate disclosure of the remaining information at issue would create a substantial threat of physical harm to an individual. Therefore, the city may not withhold any of the remaining information you have marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Some of the remaining information 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, with respect to the requestors who did not give the requisite information under section 1701.661(a) of the Occupations Code, our ruling does not reach the body worn camera recordings and that information need not be released to those requestors. Except for the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 418.176

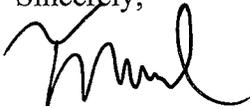
of the Government Code. The city must withhold the W-4 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. Except for the information we have marked for release, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The city must withhold the information you have marked and we have marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The city may withhold the information you have marked under section 552.108(a)(1) of the Government Code. Under section 552.101 of the Government Code in conjunction with common-law privacy, the city must withhold (1) the identifying information of the sexual assault victim you have marked and indicated and we have marked and indicated, (2) the information we have marked, and (3) the remaining dates of birth of living identifiable public citizens; however, the city must release the date of birth belonging to the requestor in Dallas ORR No. 2016-17206 to that requestor. The city may withhold the responsive information you have marked under section 552.107(1) of the Government Code. With the exception of the information we have marked for release, the city must withhold the information you have marked and we have marked for withholding that pertains to peace officers killed in the line of duty under section 552.117(a)(4) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. To the extent the cellular telephone service was not paid for by a governmental body, the city must withhold the cellular telephone numbers you have marked and we have marked under section 552.117(a)(2) of the Government Code. If the individuals who are current or former employees of the city timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, then, with the exception of the information we have marked for release, the city must withhold the cellular telephone numbers you have marked and we have marked for withholding under section 552.117(a)(1) of the Government Code. To the extent the individuals whose information we have marked elect to restrict access to their information in accordance with section 552.1175(b), the city must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. With the exception of the information we have marked for release, the city must withhold the remaining motor vehicle record information you have marked and the information we have marked and indicated for withholding under section 552.130 of the Government Code. Except for the information we have marked for release, the city must withhold the information you have marked and we have marked for withholding under section 552.136 of the Government Code. With the exception of the information we have marked for release, the city must generally withhold the personal e-mail addresses you have marked and the information we have marked for withholding under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure or subsection (c) applies. The city must withhold the information you have marked under section 552.139 of the Government Code. The city must withhold the DD-214 form it

received after September 1, 2003, which we have marked, under section 552.140 of the Government Code. If the city came into possession of the remaining submitted DD-214 form on or after September 1, 2003, then the city must withhold this form, which we have marked, under section 552.140 of the Government Code. The city must withhold the information pertaining to undercover officers, which you have marked and indicated, under section 552.152 of the Government Code. The remaining responsive information must be released; however, any information subject to copyright may only be released in accordance with copyright law.

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/akg

Ref: ID# 627533

Enc. Submitted documents

c: 50 Requestors  
(w/o enclosures)

Third Party  
(w/o enclosures)