



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 9, 2009

Mr. Russell Brown  
Records Manager  
Bellaire Police Department  
5110 Jessamine  
Bellaire, Texas 77401-4495

OR2009-06691A

Dear Mr. Brown:

This office issued Open Records Letter No. 2009-06691 (2009) on May 18, 2009 pertaining to the City of Bellaire (the "city"). We have examined this ruling and determined that we made an error, which resulted in an erroneous determination that the city may withhold the information at issue under section 552.103 of the Government Code. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on May 18, 2009. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 343418 (Bellaire OR 09-17).

The city received a request for information pertaining to the following, over specified time periods: (1) two named police officers; (2) racial profiling, physical abuse, assault, or police brutality committed by members of the city police department (the "department"); (3) the department's weapons and ammunition; and (4) a specified incident. The requestor has also requested the video and audio recordings of a specified city council meeting, which you state have been released. You also state the city does not have any information responsive to a portion of the request.<sup>1</sup> You claim that the submitted information is excepted from

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986),

disclosure under sections 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling. Failure to do so may result in the presumption that the redacted information is public. *See* Gov't Code § 552.302.

Next, you state that the city sought clarification from the requestor regarding several portions of the request for information. *See id.* § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You do not indicate the city has received a response from the requestor. We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted information responsive to the portions of the request for which you sought clarification and raised exceptions to disclosure for this information, we consider the city to have made a good faith effort to identify information that is responsive to the portions of the request for which you sought clarification, and we will address the applicability of the claimed exceptions to the submitted information.

You assert that a portion of the request is "essentially an interrogatory" and not a request for documents. We agree that the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. However, we note that any written communication that can reasonably be judged to be a request for information qualifies as a request under Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974) (Act does not require that request for information refer to Act or be addressed to officer for public information; as hyper-technical reading of Act would not effectuate its purpose, any written communication that can

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342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1(1990), 555 at 1-2 (1990), 416 at 5 (1984).

reasonably be judged to be request for information qualifies as request under Act). In addition, the Act requires a governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). In this instance, the city has made a good faith effort to relate this portion of the request to information in its possession by submitting responsive information. Accordingly, we will consider your arguments with regard to the information you have submitted as responsive to this portion of the request for information.

Next, we note some of the requested information was the subject of three previous requests for information, in response to which this office issued Open Records Letter Nos. 2009-02211 (2009), 2009-02437 (2009), and 2009-04193 (2009). To the extent the pertinent facts and circumstances have not changed since the issuance of these rulings, the city may continue to rely on Open Records Letter Nos. 2009-02211, 2009-02437, and 2009-04193 for the information that was at issue in these prior rulings. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as a previous determination when (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We will now address your arguments for the submitted information that is not subject to Open Records Letter Nos. 2009-02211, 2009-02437, and 2009-04193.

We also note that portions of the submitted information consist of completed investigations and completed evaluations, which are subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code as an exception to disclosure for this information, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the completed investigations and completed evaluations under section 552.103. However, because sections 552.117 and 552.130 of the Government Code are "other law" for the purposes of section 552.022, we will address the applicability of these exceptions to the completed investigations and evaluations, as well as the remaining information. We will also

address the applicability of section 552.108 to the completed investigations and evaluations, as well as the remaining information.

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). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note that the completed investigations include citations. Because a copy of the citations has been provided to the individuals who were cited, we find that release of the citations will not interfere with the detection, investigation, or prosecution of crime. *See Gov’t Code* § 552.108(a)(1). Therefore, the city may not withhold the submitted citations under section 552.108(a)(1). You state, and have provided an affidavit from the Harris County District Attorney’s Office (the “district attorney”) stating, that the remaining information relates to a pending criminal investigation being conducted by the district attorney. Based on your representations and our review, we determine that the release of the remaining information 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, with the exception of the submitted citations, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

We note that one of the citations, submitted as part of a completed internal affairs investigation, contains information that identifies a juvenile offender. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>3</sup> Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders,

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

<sup>3</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).*

attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found that common-law privacy applies to certain information regarding juvenile offenders. *See* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007. Accordingly, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

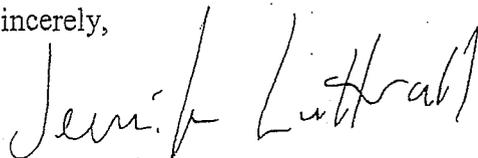
The submitted citations in the completed investigations contain information subject to section 552.130 of the Government Code. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130. The city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the city may continue to rely upon Open Records Letter Nos. 2009-02211, 2009-02437, and 2009-004193 as previous determinations for the submitted information that was at issue in those rulings. With the exception of the submitted citations, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked in the citations under (1) section 552.101 of the Government Code in conjunction with common-law privacy and (2) section 552.130 of the Government Code. The remaining information in the submitted citations must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

