



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2010

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2010-01235

Dear Mr. Phillips:

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# 368072 (Fort Worth PIR Numbers 0294-10 & 0486-10).

The City of Fort Worth (the "city") received two requests from the same requestor for police incident report number 08-105796. You state that you have redacted Texas driver's license numbers and motor vehicle information from the submitted information under section 552.130 of the Government Code pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You also state that you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under section 552.151 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge the city failed to meet the ten-business-day deadline prescribed by section 552.301(b) of the Government Code in requesting an open records decision from this office in response to the first request. Gov't Code § 552.301(b). We note the

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

department has also failed to meet the fifteen-business-day deadline prescribed by section 552.301(e) in regard to the first request. *Id.* § 552.301(e). Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *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); *see also* Open Records Decision No. 630 (1994). A compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 (1977). Because section 552.151 of the Government Code can provide a compelling reason to withhold information, we will address your argument under this exception.

You seek to withhold the name and identification number of an undercover officer from the submitted report pursuant to section 552.151 of the Government Code, which provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 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.

Gov't Code § 552.151. You state release of the undercover police officer's name and identification number would allow suspected criminals to identify the officer in future undercover operations and allow previously arrested or convicted individuals to seek revenge on the officer, thereby putting the officer at risk. Based on your representations, we find the city has demonstrated that release of this information would subject the officer to a substantial threat of physical harm. We therefore conclude the city must withhold the officer's name and identification number in the submitted information, which you have marked, under section 552.151 of the Government Code.

We note that the remaining information contains unredacted information subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. The photographs in the submitted report include Texas license plate numbers that are subject to section 552.130. Accordingly, the department must

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

withhold the license plate numbers in the submitted photographs, which we have marked, under section 552.130 of the Government Code.³

In summary, the department must withhold the police officer's identifying information it has marked under section 552.151 of the Government Code. The department must withhold the license plate numbers we have marked in the submitted photographs under section 552.130 of the Government Code. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 368072

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold then categories of information, including Texas driver's license numbers and motor vehicle information under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.