



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2010

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2010-09747

Dear Ms. Sims:

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# 385068.

The City of Lubbock (the "city") received a request for information pertaining to vehicle crashes involving city vehicles driven by police officers during specified time periods. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.130, and 552.151 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You claim portions of the submitted spreadsheet are confidential under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name

¹Although you also raise sections 552.103 and 552.111 of the Government Code, you have submitted no arguments in support of the applicability of these exceptions to the submitted information. Therefore, we assume you no longer claim section 552.103 or section 552.111. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why claimed exceptions to disclosure apply). Additionally, although you also raise section 552.1175 of the Government Code, the proper exception in this instance is section 552.117 of the Government Code because the city holds the information at issue in an employment context.

of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.*

You state the submitted information identifies the dates of accidents, the names of persons involved in those accidents, and the specific locations of the accidents. You further state the this "information is taken from [accident reports completed pursuant to the Transportation Code]." We note that as amended by the Seventy-fifth Legislature in section 13 of Senate Bill No. 1069, section 550.065(a) previously provided as follows:

(a) This section applies only to information that is held by the [Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident, including:

- (1) information reported under this chapter, Section 601.004, or Chapter 772, Health and Safety Code;
- (2) information contained in a dispatch log, towing record, or a record of a 9-1-1 service provider; and
- (3) the part of any other record that includes information relating to the date of the accident, the name of any person involved in the accident, or the specific location of the accident.

See Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582. The prior version of section 550.065 was held to be unconstitutional, however, and its enforcement was permanently enjoined. *See Texas Daily Newspaper Ass'n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex.) (Final Judgment and Permanent Injunction entered January 24, 2001). Among other findings, the court concluded the prior version of section 550.065 "impose[d] a wholesale ban on information that has traditionally been public[.]" *See id.* (Findings of Fact and Conclusions of Law entered January 24, 2001).

The Seventy-seventh Legislature modified the language of section 550.065(a) in House Bill No. 1544. *See* Act of May 25, 2001, 77th Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. The legislative history of House Bill No. 1544 reflects the legislature intended to correct the deficiencies that caused the court to invalidate the previous version of the statute. Hearings on Tex. H.B. 1544 before the Senate Committee on State Affairs, 77th Leg. R.S. (May 10, 2001); *see also* Open Records Decision No. 643 at 2 (1996) (citing *Acker v. Texas Water Comm'n*, 790 S.W.2d 299 (Tex. 1990)) (legislature is presumed to have enacted a statute with complete knowledge of and reference to existing law).

Furthermore, there is no legislative indication the modified section 550.065 was intended to encompass any records other than those prepared in accordance with chapter 550 or section 601.004 of the Transportation Code. Hearings on Tex. H.B. 1544; *see also* Open Records Decision No. 643 at 2-3 (citing *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.—Corpus Christi 1985, no writ)) (when legislature amends a law, it is presumed to have intended to change the law). Accordingly, because the submitted information does not constitute accident report forms completed pursuant to chapter 550 or section 601.004 of the Transportation Code, we conclude no portion of the submitted information is made confidential by section 550.065. Thus, none of the submitted information is excepted from disclosure under section 552.101 on that basis.

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[.]” Gov’t Code § 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, 327 (Tex. App.—Austin 2002, no pet.).

To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not 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. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You seek to withhold undercover narcotics officers’ names and their vehicle information because you contend release of this information “would greatly impede the ability of these officers to remain undercover” and endanger the officers’ lives, as well as “give a tactical advantage to those suspects that are the subject of an undercover investigation.” Based on your representations, we conclude the release of the officers’ names and vehicle information

would interfere with law enforcement and crime prevention. Therefore, the city may withhold this information under section 552.108(b)(1).²

Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer requested confidentiality under section 552.024 or 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). We note section 552.117(a)(2) is applicable to a peace officer's cellular telephone number only if the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001). We agree the city must withhold the officers' home addresses within the remaining information under section 552.117(a)(2). We are unable to determine whether the telephone numbers in the remaining information are home or cellular telephone numbers of peace officers. Thus, if the telephone numbers are either the home or cellular telephone numbers of the officers, the city must withhold them under section 552.117(a)(2). However, if the telephone numbers are cellular telephone numbers of the officers, the city must only withhold them if the officers pay for the cellular service with personal funds.

Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(2). We note section 552.130 does not apply to out-of-state motor vehicle record information. *Id.* We find the city must only withhold the Texas license plate numbers within the submitted information under section 552.130. However, none of the remaining information constitutes Texas motor vehicle information for purposes of section 552.130. Consequently, none of the remaining information may be withheld under section 552.130.

We note the remaining information contains insurance policy numbers. Section 552.136(b) 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.” *Id.* § 552.136(b).⁴ This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the city must withhold the insurance policy numbers within the remaining information pursuant to section 552.136.

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

³“Peace officer” is defined by article 2.12 of the Texas Code of Criminal Procedure.

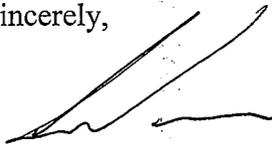
⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the city may withhold the undercover officers' names and their vehicle information under section 552.108(b)(1) of the Government Code. The city must withhold the officers' home addresses under section 552.117(a)(2) of the Government Code. The city must also withhold the telephone numbers if they belong to the officers and are either the officers' home telephone numbers or cellular telephone numbers for which the officers use personal funds to pay under section 552.117(a)(2) of the Government Code. The city must withhold the Texas license plate numbers under section 552.130 of the Government Code and the insurance policy numbers under section 552.136 of the Government Code.⁵ 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 385068

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136, without the necessity of requesting an attorney general decision.