



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2010

Ms. Ann Bright
General Counsel
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

OR2010-13267

Dear Ms. Bright:

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# 398271.

The Texas Parks and Wildlife Department (the "department") received a request for any and all transcripts and recordings of any witness interviews pertaining to a specified complaint and investigation. You inform us that you will redact the personal information of a department peace officer under section 552.117 of the Government Code.¹ You claim that a portion of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural

¹Although you state you will redact information pursuant to section 552.1175 of the Government Code, we note that section 552.117 is the proper exception in this instance because the department holds this information in an employment capacity. In Open Records Decision No. 670 (2001), we determined a governmental body may withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

requirements of the Act results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 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, 381-82 (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). The presumption that information is public under section 552.302 can be overcome by demonstrating that the 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). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Next, you explain the department inadvertently disclosed the information at issue. Section 552.007 of the Government Code provides:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

Gov't Code § 552.007. Once information has been voluntarily released to any member of the public, that same information may not subsequently be withheld from the public, unless its public disclosure is expressly prohibited by law. *See id.*; Open Records Decision Nos. 518 at 3 (1989), 490 at 1 (1988). Here, the department argues a portion of the inadvertently released information is confidential by statute. Thus, we will consider the department's assertion.

Section 552.101 excepts from 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, including section 414.009 of the Government Code, which provides in pertinent part:

(a) A person who is a member or employee of the [Texas Crime Stoppers Council] or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

Gov't Code § 414.009. You state the submitted information contains the identity of a person who made a report to Operation Game Thief, a crime stoppers organization. *See id.*

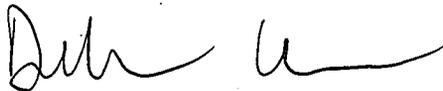
§ 414.001(2)(B) (defining “crime stoppers organization” as a public organization that is operated on a local or statewide level, that pays rewards to persons who report to the organization information about criminal activity, and that forwards the information to the appropriate law enforcement agency). You inform us the person who made the report has not consented to the disclosure of their identity. Accordingly, we conclude that the identifying information of the person who made the report to the crime stoppers organization is confidential under section 414.009 of the Government Code and must be withheld from the submitted video recordings under section 552.101 of the Government Code.

We note the remaining information contains a Texas driver’s license number. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license issued by a Texas agency.² *Id.* § 552.130(a)(1). Therefore, the department must withhold the Texas driver’s license number from the submitted video recordings under section 552.130 of the Government Code.³ The remaining submitted 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

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

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 398271

Enc. Submitted documents

c: Requestor
(w/o enclosures)