



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2010

Mr. Randall P. Gunter  
Fielder & Gunter  
310 Main Street  
Liberty, Texas 77575

OR2010-17667

Dear Mr. Gunter:

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# 400765.

The City of Liberty (the "city"), which you represent, received a request for all documents, letters, reports, records, files, information, tape-recordings, video recordings, investigation records, and dispatch logs of the city and the city's police department for a specified address from January 2010 to July 2010. You state you have released some of the requested information with redactions pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.108, 552.1175, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.<sup>2</sup>

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<sup>1</sup>We note that 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 a decision from this office under the Act.

<sup>2</sup>We assume that 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.

You raise section 552.108 of the Government Code for the information in Exhibit E and some of the information in Exhibits C and D. Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted information relates to a concluded investigation that did not result in a conviction or deferred adjudication. Based on your representation and our review, we conclude the city may withhold the information in Exhibit E and some of the information in Exhibits C and D, which we have marked, under section 552.108(a)(2).<sup>3</sup>

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

...

(5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual’s choice on a form provided by the governmental body, accompanied by evidence of the individual’s status.

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<sup>3</sup>As our ruling for this information is dispositive, we need not address your remaining arguments against disclosure.

Gov't Code § 552.1175(a)-(b). You state the information you have indicated in Exhibit B and the remaining portion of Exhibit C, including a portion of the recordings, relates to a district attorney employed by Liberty County who has chosen to restrict access to his personal information in accordance with section 552.1175(b). Based on this representation, the city must withhold the information we have indicated in Exhibits B and C under section 552.1175. We note that if the city lacks the technical capability to redact the information we have indicated in the recordings, the city must withhold the recordings in their entirety under section 552.1175. *See* Open Records Decision No. 364 (1983). However, the remaining information you have marked consists of the employee's name, which may not be withheld under section 552.1175 and must be released.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit.<sup>4</sup> Gov't Code § 552.130(a)(1). We have marked Texas driver's license numbers in Exhibits B, C, and D that are subject to section 552.130. Accordingly, the city must withhold the Texas driver's license numbers we have marked under section 552.130.

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 have marked an e-mail address in Exhibit B that is subject to section 552.137(a). Accordingly, the city must withhold the e-mail address we have marked pursuant to section 552.137, unless the owner affirmatively consents to disclosure.

In summary, the city may withhold Exhibit E and some of Exhibits C and D under section 552.108(a)(2) of the Government Code. The city must withhold the information we have indicated in Exhibits B, C, and D, including portions of the submitted recordings, under sections 552.1175, 552.130, and 552.137 of the Government Code.<sup>5</sup> However, if the city lacks the technical capability to redact the information we have indicated in the recordings, the city must withhold the recordings in their entirety under section 552.1175 of the Government Code. The remaining information must be released.

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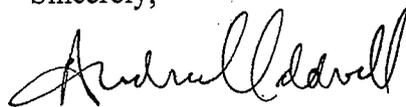
<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>We 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 and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 400765

Enc. Submitted documents

c: Requestor  
(w/o enclosures)