



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 16, 2011

Ms. Molly Shortall  
Assistant City Attorney  
City of Arlington  
P.O. Box 90231  
Arlington, Texas 76004-3231

OR2011-03622

Dear Ms. Shortall:

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# 411369.

The City of Arlington (the "city") received a request for specified audio recordings of radio transmissions pertaining to a named officer and eight categories of information pertaining to a specified incident. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-02890 (2011). In this ruling, we concluded the city must withhold a certain marked Texas license plate number under section 552.130 of the Government Code and release the remaining information. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2011-02890 was based have changed. Accordingly, with regard to the requested information that is identical to the information previously requested and ruled upon by this office in that prior ruling, we conclude the city must continue to rely

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<sup>1</sup>Although you raise sections 552.101 and 552.108 of the Government Code as exceptions to disclosure, you have not submitted any arguments regarding the applicability of these exceptions nor have you identified any information you seek to withhold under these exceptions. Therefore, we do not address the applicability of section 552.101 and 552.108 to the submitted information. See Gov't Code §§ 552.301, .302.

on Open Records Letter No. 2011-02980 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will now address your argument against disclosure of the information not encompassed by the previous ruling.

We note the submitted information pertains to a completed investigation, which is 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). Pursuant to section 552.022(a)(1), a completed investigation is expressly public unless it is either excepted under 552.108 of the Government Code or is expressly confidential under other law. Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; *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); Open Records Decision Nos. 665 at 2 n.5 (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 remaining information under section 552.103 of the Government Code. However, we will address the applicability of section 552.130 of the Government Code to portions of the submitted information.<sup>2</sup>

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 or Texas motor vehicle title or registration. Gov’t Code § 552.130(a)(1), (2). We note section 552.130 of the Government Code does not apply to out-of-state motor vehicle information. Accordingly, the city must withhold the Texas license plate numbers we have marked and the portions of the audio recordings revealing Texas license plate numbers, which we have indicated, under section 552.130.<sup>3</sup>

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<sup>2</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).

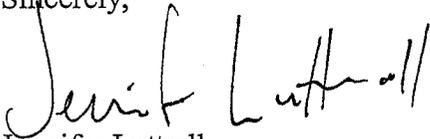
<sup>3</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the city must continue to rely upon Open Records Letter No. 2011-02980 as a previous determination and withhold or release the requested information that is identical to the information previously requested and ruled upon in accordance with that ruling. The city must withhold the information we have marked and indicated under section 552.130 of the Government Code. The remaining information must be released.<sup>4</sup>

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 411369

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the information being released contains the requestor's client's Texas license plate number, to which the requestor has a right of access pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the city receives another request for this particular information from a different requestor, then the city may withhold the requestor's client's Texas license plate number under section 552.130 of the Government Code pursuant to Open Records Decision No. 684.