



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2011

Mr. Robert E. Hager
Counsel for the City of Lancaster
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2011-10495

Dear Mr. Hager:

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# 427061 (ORR# 49460).

The City of Lancaster (the "city"), which you represent, received a request for the following information: "[c]urrent number of sworn police officers" with the Lancaster Police Department (the "department"); "[n]umber of male officers hired since 1/1/08"; "[n]umber of male officers [separated] from [the department] since 1/1/08"; "[n]umber of female officers added/hired since 1/1/2008"; and "[n]umber of female officers separated from [the department] since 1/1/2008[.]" You claim the city does not maintain information responsive to the request. You also claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered your claims and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or

representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The city received the request for information on May 27, 2011. You have submitted a city ordinance as information responsive to the request. Thus, the city complied with section 552.301(e) for this city ordinance. However, the city did not submit information responsive to the request for the total number of current officers employed by the city, the total number of male and female officers hired by the department since January 1, 2008, or the total number of male and female officers separated from employment with the department since January 1, 2008. You argue "the requestor has not made any request for documents but has asked questions concerning current and former employees of the Lancaster Police Department." You also state "the [c]ity does not maintain any record separating the male from female officers" and "no documents are maintained keeping a running total on the number of male [and female] officers hired [or] separated[.]"

The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). Based on your statements, we understand the city does not maintain information responsive to the request for the number of officers hired or separated from employment since January 1, 2008, broken down according to the sex of the officer. However, for the total number of current officers, we find the city does maintain information responsive to the request. You inform us the city is a civil service city. Section 143.089(a) of the Local Government Code requires a civil service commission to maintain a personnel file on each police officer. Loc. Gov't Code § 143.037(a). Section 143.037 of the Local Government Code requires the civil service personnel file of each officer to contain, among other things, the date the officer was notified to report for duty and the date the appointed officer's pay is to start. *Id.* § 143.037(a), (b)(7)-(8). It is reasonable to expect the personnel file to contain information about whether an officer has been separated from employment with the police department and, consequently, to conclude that the city has the necessary information to enable it to cull out information about separated officers from the personnel file information responsive to the request for the number of current officers. *Cf.* Occ. Code § 1701.452(a) (requiring law enforcement agency to submit F-5 report to Commission on Law Enforcement Officer Standards and Education within seven days of licensed peace officer resigning, retiring, or separating from agency, or exhausting all administrative appeals after being terminated by the agency). Thus, the requested information pertaining to the number of current officers exists in the city's civil service personnel files. In addition, it is reasonable to expect information reflecting the number of current officers would also exist in the payroll records of the city's Human Resources Department. Accordingly, because the city has not submitted information responsive to the request for the total number of current officers, we conclude it has failed to comply with section 552.301(e) regarding this information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 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 id.* § 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is discretionary in nature; it serves only to protect a governmental body's interests. *See 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); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the city's claim under section 552.103 is not a compelling reason to overcome the presumption of openness. Therefore, the city may not withhold the information responsive to the request for the number of current officers under section 552.103, but instead must release this information to the requestor.

As noted above, you have submitted a city ordinance as information responsive to the request that the city seeks to withhold from disclosure under section 552.103. In Open Records Decision No. 551 at 2-3 (1990), this office considered whether a city ordinance could be withheld from the public under the Act. In that decision, we stated

It is difficult to conceive of a more open record. The law, binding upon every citizen, is free for publication to all. *Banks v. Manchester*, 128 U.S. 244, 253 (1888). This policy is based on the concept of due process which requires that the people have notice of the law. *Building Officials & Code Admin. v. Code Technology, Inc.*, 628 F.2d 730, 734 (1st Cir. 1980). Given this constitutional consideration, it is difficult to hypothesize a circumstance that would bring a law or ordinance within an exception to public disclosure.

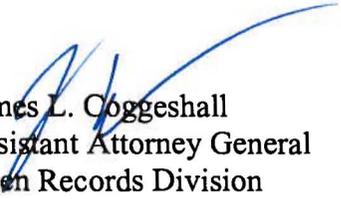
ORD 551 at 2-3. Thus, because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. Therefore, the city may not withhold the submitted ordinance from release under section 552.103 of the Government Code, but instead must release it, as well as the information responsive to the request for the number of current police officers. *See* ORD 551 at 2-3.

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 427061

Enc. Submitted documents

c: Requestor
(w/o enclosures)