



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2011

Captain Curtis C. Frame  
Jasper Police Department  
555 South Main  
Jasper, Texas 75951

OR2011-18924

Dear Captain Frame:

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# 440205.

The Jasper Police Department (the "department") received a request for radio traffic involving a named individual during a specified period, including a reference to a "big black flashlight."<sup>1</sup> You state the department has no information responsive to the portion of the request pertaining to a "big black flashlight" during the relevant time period.<sup>2</sup> You ask whether the submitted information is responsive to the request and, if so, whether any of it is confidential and may not be released under the Act. We have reviewed the information you submitted.

Initially, we address your statement that "separation of protected information from non protected information could be a difficult task[.]" We note administrative inconvenience in responding to a request for information is not grounds for refusing to comply with a request

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<sup>1</sup>We note the requestor narrowed a portion of her request in response to the department seeking a ruling from this office. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990), 452 at 3 (1986), 362 at 2 (1983).

under the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); Open Records Decision No. 497 (1988) (fact that it may be burdensome to provide information does not relieve governmental body of its responsibility under the Act). In this instance, the department has submitted information it deems is responsive to the request. Accordingly, we will determine whether any of the submitted information is excepted from disclosure.

Next, we must address the department's responsibilities under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from required public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code* § 552.301(b). Additionally, under section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. Although you generally ask whether the submitted information is excepted from required disclosure, as of the date of this letter you have not asserted any specific exceptions to disclosure or stated the reasons why any specific exception applies. Accordingly, we conclude the department has failed to comply with the procedural requirements of section 552.301 of the Government Code.

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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); 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). Upon review of the submitted information, we find some of it is subject to section 552.130 of the Government Code, which is a mandatory exception and can provide a compelling reason for non-disclosure for purposes of section 552.302.<sup>3</sup>

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country.

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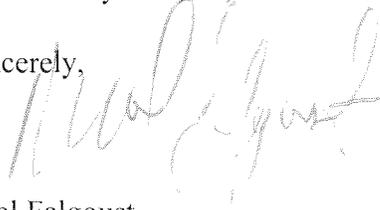
<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.130(a)(2). Accordingly, the department must withhold the information we have indicated under section 552.130 of the Government Code. As the department raises no further exceptions, 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 440205

Enc. Submitted documents

c: Requestor  
(w/o enclosures)