



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2012

Mr. Randall Miller
Assistant Criminal District Attorney
Navarro County
300 West 3rd Avenue, Suite 203
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Mr. Larry Cheek
Chief of Police
Rice Police Department
P.O. Box 97
Rice, Texas 75155

OR2012-02059

Dear Mr. Miller and Mr. Cheek:

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# 444918.

The Rice Police Department (the "department") received two requests from the same requestor for all dashboard camera video recordings for all traffic stops made by a named department officer for a specified time period, the named officer's personnel file, and the department's policy and procedural manual that was in effect on a specified date. The department claims that the submitted information is excepted from disclosure under sections 552.108, 552.119, and 552.152 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Initially, the department claims the requestor is making frivolous requests that place "an unnecessary burden on the resources of [the department.]" We note a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. Open Records Decision No. 561 at 8-9 (1990). We also note section 552.222 of

the Government Code authorizes a governmental body to ask the requestor to clarify or narrow requests for information that are unclear or burdensome. *See* Gov't Code § 552.222(b). A governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Further, this office has determined the Act does not permit the consideration by a governmental body or this office of a requestor's intended use of information when responding to open records requests. Gov't Code § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision Nos. 508 at 2 (1988) (motives of a person seeking information under the Act are irrelevant), 51 (1974). Thus, the department must release the requested information unless it falls within the scope of an exception to disclosure.

Next, we note the department has not submitted the requested policy and procedural manual. To the extent information responsive to this portion of the request existed at the time the department received the request, we assume the department has released it. If the department has not released such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, the department states it will make the requested dashboard camera video recording available to the requestor for inspection. However, the requestor states he wishes to be mailed a copy of the video recording. The department refers to section 552.226 of the Government Code to support its assertion that it is not required to mail a copy of the requested video recording to the requestor. However, we note section 552.226 states the Act does not authorize the removal of an original copy of a public record from the office of a governmental body. Gov't Code § 552.226. While we agree the Act does not require the department to release the original copy of the requested video, in this instance, the requestor is seeking a copy of the video recording at issue, not the original. Section 552.228 of the Government Code explicitly requires a governmental body to provide "a suitable copy" of public information within a reasonable time after the date on which the copy is requested. *Id.* § 552.228. Furthermore, the duty of the public information officer is to promptly produce public information so that the requestor may inspect the information, copy the information, or both inspect and copy the information, whichever the requestor chooses. *See id.* § 552.221(a); Open Records Decision No. 512 at 1 (1988) (predecessor provisions of the Act gives requestor option to take notes from original documents, pay for copies of public records, or both). The language of section 552.221 does not give the public information officer the discretion to choose whether to comply; upon request for the information, the officer must make the information available as required under section 552.221. *Moore v. Collins*, 897 S.W.2d 496, 499 (Tex. App.—Houston [1st Dist.] 1995, no writ). The requestor asked for a copy of the video recording at issue; therefore, pursuant to section 552.221 of the Government Code, the department must provide a copy of the information at issue to the requestor.

Next, the requestor contends the department failed to comply with the procedural requirements of the Act. Pursuant to section 552.301(d) of the Government Code, a governmental body must provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1). The submitted information indicates the department received the first request for information on November 8, 2011. Thus, the department's ten business-day deadline to provide information to the requestor pursuant to subsection 552.301(d) was November 22, 2011. The requestor submitted a copy of a letter the department sent to him on November 18, 2011 stating the department wishes to withhold some of the requested information and asked for a decision from this office. Thus, we find the department has complied with section 552.301(d). However, the requestor also states he did not receive a copy of the department's request for an opinion to this office. The department cannot confirm that a copy of its brief was mailed to the requestor. Thus, we conclude the department failed to comply with the requirements of section 552.301(e-1) 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 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 552.108 is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision Nos. 665 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the department's claim under section 552.108 is not a compelling reason to overcome the presumption of openness. Therefore, the department may not withhold any of the submitted information under section 552.108. However, because sections 552.119 and 552.152 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of these exceptions to the submitted information.

First, we address the department's argument under section 552.152 of the Government Code, as it is potentially the most encompassing. Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances

pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The department seeks to withhold the submitted information under section 552.152. Upon review, we find the department has failed to demonstrate that release of this information would subject any officer to a substantial threat of physical harm. Therefore, the department may not withhold the submitted information under section 552.152.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ *Id.* § 552.101. Section 552.101 encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. We note section 411.083 does not apply to active warrant information or other information relating to one’s current involvement with the criminal justice system. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person’s current involvement in the criminal justice system). Further, CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find portions of the submitted information, which we have marked, consist of CHRI that is confidential under section 411.083. Thus, the department must withhold the marked information under section 552.101 in conjunction with section 411.083 of the Government Code.²

¹The 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).

²As our ruling is dispositive, we need not address your argument under section 552.119 of the Government Code.

Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). The Texas Supreme Court has recently considered the applicability of section 552.102, and has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). Accordingly, the department must withhold the employee dates of birth we have marked under section 552.102 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, personal pager and cellular telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.³ Gov’t Code § 552.117(a)(2). Accordingly, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.130 provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state, another state, or country is excepted from public release. *Id.* § 552.130(a)(1), (2). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

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 that is not specifically excluded by section 552.137(c). As such, the marked e-mail address must be withheld under section 552.137, unless the owner of the address affirmatively consents to its release.⁴ *See id.* § 552.137(b).

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code. The department must withhold the employee dates of birth we have marked under section 552.102 of the Government Code. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. The department must withhold the information we have marked under section 552.130 of the Government Code. The department must withhold the e-mail address we have marked under

³Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure.

⁴We note Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.137 of the Government Code, unless the owner of the address affirmatively consents to its release. 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 444918

Enc. Submitted documents

cc: Requestor
(w/o enclosures)