



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2012

Ms. Judith N. Benton  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2012-09122

Dear Ms. Benton:

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# 456417 (Waco Reference No. LGL-12-499).

The City of Waco (the "city") received a request for all incident reports pertaining to a specified daycare facility. You state you have released some of the information responsive to this request. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to 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 (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) 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). You inform us the city received the request for information on March 23, 2012 and that city offices were closed April 6, 2012. Accordingly, the city's fifteen-business-day deadline was April 16, 2012. You submitted some responsive information on April 9, 2012.

However, you have submitted documentation indicating the city only searched for information created in the last five years. We 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). However, 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). As of the date of this letter, you have not submitted for our review a copy or representative sample of requested information that was created more than five years ago. Consequently, we find the city failed to comply with the requirements of section 552.301 with respect to that 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* Gov't Code § 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, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). 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). However, because the city has not submitted information more than five years old for our review, we have no basis to conclude this information is confidential by law. Thus, we have no choice but to order the city to release the requested information that is more than five years old in accordance with section 552.302 of the Government Code. As you have submitted responsive information that was created within the last five years, we will address your arguments against disclosure of the submitted information.

Section 552.108(a)(1) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number 09-12601 is related to an open criminal investigation. Therefore, based upon your representations and our review, we conclude section 552.108(a)(1) is applicable to the information you have marked in report number 09-12601 and release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Accordingly, the city may withhold the information you have marked in report number 09-12601 under section 552.108(a)(1) of the Government Code.

Although you also claim report numbers 07-10998 and 07-15835 pertain to pending criminal investigations, we note these reports involve alleged criminal mischief. The longest possible statute of limitations for the offenses described in the reports is two years. *See* Penal Code § 28.03(b)(2) (criminal mischief is a Class B misdemeanor if the pecuniary loss is \$50 or more, but less than \$500); Crim. Proc. Code art. 12.02 (indictment for misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward). More than two years have elapsed since the events giving rise to the investigations in report numbers 07-10998 and 07-15835, and you have not informed this office any criminal charges were filed within the limitations periods. Furthermore, you have not otherwise explained how release of these reports would interfere with the detection, investigation, or prosecution of crime. Thus, report numbers 07-10998 and 07-15835 may not be withheld under section 552.108(a)(1).

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; a motor vehicle title or registration issued by an agency of this state or another state or country; or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document. Gov't Code § 552.130(a). Therefore, the city must withhold the information we have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information you have marked in report number 09-12601 under section 552.108(a)(1) of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.<sup>1</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

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<sup>1</sup>We note the information being released contains a social security number. 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. Gov't Code § 552.147(b).

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,

A handwritten signature in black ink, appearing to read 'BAB', with a stylized flourish extending to the right.

Benjamin A. Bellomy  
Assistant Attorney General  
Open Records Division

BAB/dls

Ref: ID# 456417

Enc. Submitted documents

c: Requestor  
(w/o enclosures)