



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2013

Chief Dan Dennis
Chief of Police
Forest Hill Police Department
3336 Horton Road
Forest Hill, Texas 76119

OR2013-00974

Dear Chief Dennis:

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# 477334.

The City of Forest Hill (the "city") received two requests for information pertaining to a specified incident. You inform us the city has released some of the requested information, including basic information, to the requestors. *See* Gov't Code § 552.108(c) (basic information about arrested person, arrest, or crime is not excepted under section 552.108); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note you have redacted social security numbers as permitted by section 552.147(b) of the Government Code.¹ You claim Exhibits B and C are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations 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(b), the governmental body must request a ruling

¹Section 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b).

from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You inform us the city received the requests for information on October 29, 2012. Accordingly, the city's ten-business-day deadline was November 12, 2012. We note, however, the two envelopes in which the city submitted its requests for rulings each bear post meter marks of November 8, 2012, and post meter marks of November 14, 2012. Section 552.308 of the Government Code provides, when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* § 552.308. Therefore, we conclude the city failed to comply with the requirements of section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists for withholding 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). A compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code for Exhibits B and C, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). As such, the city's claim under section 552.108 does not constitute a compelling reason to withhold information for purposes of section 552.302, and Exhibits B and C may not be withheld on that basis. However, we note the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302 of the Government Code. *See* Open Records Decision No. 586 at 2-3 (1991). In this instance, you inform us the Texas Rangers assert a law enforcement interest in the information at issue. Therefore, we will determine whether the city may withhold Exhibits B and C on behalf of the Texas Rangers under section 552.108.

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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 may be invoked by the proper custodian of information relating to an

investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). You represent the Texas Rangers have informed you that they object to the release of Exhibits B and C because doing so would interfere with their pending criminal investigations. Based on this representation and our review, we conclude 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 per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold Exhibits B and C on behalf of the Texas Rangers under section 552.108(a)(1) of the Government Code.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 477334

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)