



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2014

Mr. Peter G. Smith  
City Attorney  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2014-01886

Dear Mr. Smith:

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# 512759 (Richardson File No. 13-827).

The Richardson Police Department (the "department") received a request for (1) officer training materials; (2) a complete record of a specified officer's training history; (3) the specified officer's personnel file; and (4) nine categories of information related to a specified shooting incident. You state the department has released the submitted information in Exhibit B. You claim the submitted information in Exhibit C is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.1085, 552.117, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note Exhibit C is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in pertinent part, as follows:

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<sup>1</sup>Although you have marked some information under section 552.1175 of the Government Code, we note section 552.117 is the proper exception for information held in an employment context.

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). We note the submitted information in Exhibit C is part of a completed investigation that is subject to section 552.022(a)(1). The department must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). Although you raise section 552.103 of the Government Code for Exhibit C, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the department may not withhold Exhibit C under section 552.103 of the Government Code. However, because information subject to section 552.022(a) may be withheld under section 552.108, we will address the applicability of this section to the information subject to section 552.022(a)(1). Further, because sections 552.101, 552.1085, 552.117, and 552.130 make information confidential under the Act, we will also address the applicability of these sections to the information subject to section 552.022(a).

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information it seeks to withhold under that section relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You state the information you have marked relates to a criminal prosecution that concluded in a result other than conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable, and the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license, title, or registration, issued by an agency of this state or another state or country. *Id.* § 552.130(a)(1)-(2). We note the purpose of section 552.130 is to protect the privacy interests of individuals. Because the right of privacy lapses at death, motor vehicle record information that pertains solely to deceased individuals may not be withheld under section 552.130. *See Moore v. Charles B. Pierce Film Enters.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death). You have marked motor vehicle record information of a vehicle that was being driven by an individual who is now deceased. If a living person owns an interest in this vehicle, the department must withhold the marked motor vehicle record information pertaining to this vehicle under section 552.130 of the Government Code. If no living person owns an interest in the vehicle at issue, the department may not withhold the marked motor vehicle record information under section 552.130 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). Therefore, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.<sup>3</sup>

In summary, the department may withhold the information you have marked under section 552.108(a)(2) of the Government Code. If a living person owns an interest in the vehicle at issue, the department must withhold the marked motor vehicle record information under section 552.130 of the Government Code. The department must also withhold the information we have marked under section 552.117(a)(2) of the Government Code. The remaining information must be released.

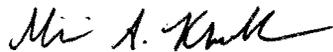
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>3</sup>We note a governmental body may withhold a peace officer's home address and telephone number, personal cellular telephone and pager numbers, social security number, and family member information under section 552.117(a)(2) without requesting a decision from this office. *See* Open Records Decision No. 670 (2001).

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 512759

Enc. Submitted documents

c: Requestor  
(w/o enclosures)