



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2014

Ms. Rachel Saucier
Legal Assistant
City of Georgetown
P.O. Box 409
Georgetown, Texas 78627-0409

OR2014-10647

Dear Ms. Saucier:

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# 526390 (PD ORR 2014-181).

The City of Georgetown (the "city") received a request for the personnel file of a former city police officer. You claim the requested information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. We have considered your claims.

Initially, we note the requested information may have been the subject of several previous requests for information, in response to which this office issued Open Records Letter Nos. 2008-14909 (2008), 2008-09704 (2008), 2008-04686 (2008), and 2006-06875 (2006). In those rulings, we concluded the city (1) must withhold the former officer's internal departmental file under section 552.101 of the Government Code in conjunction with section 143.089(g) of Local Government Code and other responsive information under sections 552.117, 552.130, and 552.136 of the Government Code; (2) may withhold certain information under sections 552.103, 552.108, and 552.147 of the Government Code¹; and (3) must release the remaining information. To the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior rulings, and provided the law, facts, or circumstances on which the prior rulings were based have not changed, the city may continue to rely on Open Records Letter Nos. 2008-14909,

¹We note the city previously raised section 552.103 in connection with a civil service appeal pending in 2008 and raised section 552.108 in connection with a 2008 pending criminal prosecution by the Williamson County District Attorney's Office. We note the city does not presently raise these exceptions.

2008-09704, 2008-04686, and 2006-06875 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). To the extent the information at issue is not encompassed by the previous rulings or if the law, facts, or circumstances on which the prior rulings were based have changed, we will address your arguments against disclosure.

We next note 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 public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office (1) 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 id.* § 552.301 (e). As of the date of this letter, you have not submitted to this office a copy or representative sample of any information responsive to the request. Consequently, we find the city failed to comply with the requirements of section 552.301.

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 unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982).

Although you raise sections 552.101 and 552.1175 of the Government Code, which can provide compelling reasons to withhold information, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the remaining requested information released to the requestor pursuant to section 552.302 of the Government Code.

In summary, provided the law, facts, or circumstances on which the prior rulings were based have not changed, the city may continue to rely on Open Records Letter Nos. 2008-14909, 2008-09704, 2008-04686, and 2006-06875 as previous determinations and withhold or release the previously ruled upon information in accordance with those rulings. The city must release any remaining information to the requestor pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 526390

c: Requestor