ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2005

Ms. Charlotte L. Staples
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2005-10351

Dear Ms. Staples:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 236388.

The City of North Richland Hills (the "city"), which you represent, received a request for four categories of information pertaining to a named police officer. You state that you are releasing most of the requested information.[1] You claim that a portion of the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we address the city's obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it

[1]You inform us that the requestor agreed to exclude from his request the named police officer's social security number and a citizen's e-mail address. Therefore, as this information is not responsive to the request, the city need not release any such information to the requestor. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd).

seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

In this instance, you failed to submit the information at issue to this office within the fifteen-business-day period prescribed by section 552.301(e).[2] Therefore, the submitted information is presumed to be public under section 552.302 and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As your claim under section 552.130 of the Government Code can provide a compelling reason for non-disclosure, we will address this exception.

Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). Section 552.130 is not applicable to the state of issuance of motor vehicle or personal identification information. Accordingly, the city must withhold the motor vehicle information that it has highlighted pursuant to section 552.130 of the Government Code, except as we have marked otherwise.

We note that the submitted information includes social security numbers that belong to individuals other than the named police officer. Section 552.147 of the Government Code[3] provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[4] Therefore, the city must withhold the social security numbers contained in the submitted information under section 552.147.

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[2]You inform us that the city received the present request for information on August 24, 2005. Accordingly, the department's fifteen-business-day deadline was September 15, 2005. Your submission of the information at issue is meter-marked September 16.

[3]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (codified at Tex. Gov't Code § 552.147).

[4]We note that 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.

In summary, the city must withhold the information it has highlighted, except as we have marked otherwise, under section 552.130 of the Government Code. The social security numbers must be withheld under section 552.147. The rest of the submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

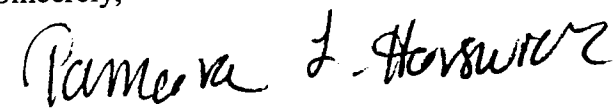
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 236388

Enc. Submitted documents

c: Mr. Jim Lane
Attorney at Law
204 West Central Avenue
Fort Worth, Texas 76106
(w/o enclosures)