



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2006

Ms. Nelwyn Ward
City Secretary
City of Memphis
721 Robertson Street
Memphis, Texas 79245

OR2006-05103

Dear Ms. Ward:

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# 249235.

The Memphis Police Department (the "department") received a request for all information in the requestor's personnel file with the department. You state that the department has released some of the requested information, but you seek to withhold the submitted information. We have reviewed the submitted information.

First, we must address the department's procedural obligations under the Act. Section 552.301(b) of the Government Code provides that a governmental body that seeks to withhold requested information must ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(a), (b). Furthermore, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A), (D).

In a letter dated March 10, 2006, you timely requested a decision from this office and explained that the "Police Chief does not want to release his files relating to investigated notes or the alleged wrong doings that have been turned over to the Texas Ranger."

However, you did not raise any exceptions to disclosure under the Act or provide any arguments explaining the reasons why any such exceptions would apply to allow any portion of the submitted information to be withheld. You simply state that "the information relates to an investigation." As of the date of this ruling, the department has not provided this office with any claimed exceptions to disclosure under the Act or provided any arguments explaining the reasons why any such exceptions would apply to allow any of the information at issue to be withheld. We therefore conclude that the department failed to comply with the procedural requirements of section 552.301 of the Government Code.

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 a compelling reason is demonstrated to withhold the information from disclosure. *See* Gov't Code § 552.302; *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. 319 (1982). Generally, a compelling reason to withhold information exists when the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994). Upon review of the information at issue, we note that portions of it are subject to sections 552.130 and 552.147 of the Government Code, each of which is a mandatory exception to disclosure under the Act that may not be waived by a governmental body.¹ Because these mandatory exceptions provide compelling reasons to withhold information from disclosure, we address their applicability to the submitted information.

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Some of the submitted documents consists of handwritten radio logs. We are unable to determine for certain whether some of the numbers appearing in these radio logs are Texas driver's license or licence plate numbers. Therefore, to the extent the information we have marked in the handwritten radio logs consists of Texas driver's license or licence plate numbers, the department must withhold this information under section 552.130. The department must also withhold under this exception the Texas motor vehicle record information we have marked in the remainder of the submitted documents.

The submitted information also includes a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.130 and 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

from” required public disclosure under the Act. Therefore, the department must withhold the social security number we have marked under section 552.147.²

In summary, (1) to the extent it consists of Texas driver’s license or licence plate numbers, the department must withhold the information we have marked in the handwritten radio logs under section 552.130 of the Government Code; (2) the Texas motor vehicle record information we have marked in the remainder of the submitted information must also be withheld under section 552.130;(3) the social security number we have marked under section 552.147 of the Government Code must be withheld; and (4) the remaining submitted information must be released to the requestor.

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 ten 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

²We 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.

body. *Id.* § 552.321(a); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 249235

Enc. Submitted documents

c: Mr. Chris Adames
c/o Ms. Nelwyn Ward
City Secretary
City of Memphis
721 Robertson Street
Memphis, Texas 79245
(w/o enclosures)