



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 9, 2009

Mr. C. Patrick Phillips  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2009-09469

Dear Mr. Phillips:

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# 348588 (Fort Worth Request No. 3180-09).

The City of Fort Worth (the "city") received a request for information relating to a specified incident. You state you have redacted Texas-issued motor vehicle record information other than the requestor's pursuant to the previous determinations issued to the city in Open Records Letter Nos. 2007-00198 (2007) and 2006-14726 (2006). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You state you have redacted social security numbers other than the requestor's pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.108 and 552.151 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, the city did not timely raise section 552.151 in accordance with section 552.301 of the Government Code. *See* Gov't Code § 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

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<sup>1</sup>Section 552.147(b) 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.

<sup>2</sup>We note that in your letter of June 29, 2009 you no longer assert your argument under section 552.101 of the Government Code.

that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.151 of the Government Code can provide a compelling reason that overcomes the presumption of openness; therefore, we will consider your argument under this section. As you timely submitted your argument under section 552.108, we will also consider this section for the submitted information.

Section 552.108(a) 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us, and provide an affidavit stating, that the Tarrant County District Attorney’s Office objects to disclosure of the submitted report because its release would interfere with a pending criminal prosecution. Based upon this representation and the submitted affidavit, we conclude that the release of the report 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we conclude that section 552.108(a)(1) is applicable to the report.

As you acknowledge, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes the names of the arresting and investigating officers. *See* 531 S.W.2d at 184-85; *see also* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). In this case, however, the city seeks to withhold the names of the arresting and investigating officers in the submitted report under section 552.151 of the Government Code.

The Eighty-first Legislature recently enacted section 552.151 of the Government Code which relates to a public employee or officer’s safety. *See* Act of June 3, 2009, 81st Leg., R.S., S.B. 1068, § 4 (to be codified at Tex. Gov’t Code § 552.151). This section provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances

pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

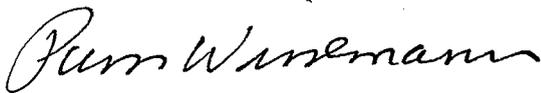
*Id.* In this instance, you explain the release of the undercover officers' names and identification numbers would likely cause them to face a substantial threat of physical harm. Based on your representations and our review, we find the city has demonstrated that section 552.151 is applicable to the information at issue. Accordingly, the city must withhold the names and identification numbers you have marked, and the names we have marked, under section 552.151 of the Government Code.

In summary, with the exception of basic information, the city may withhold the submitted report under section 552.108 of the Government Code. The city must withhold the marked identifying information of the undercover officers under section 552.151 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.

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](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 at (512) 475-2497.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/dls

Ref: ID# 348588

Enc. Submitted documents

c: Requestor  
(w/o enclosures)