



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2009

Ms. Julia Gannaway
Lynn Pham & Ross, LLP
306 West Broadway Avenue
Fort Worth, Texas 76104

OR2009-10358

Dear Ms. Gannaway:

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# 350194.

The City of Weatherford (the "city"), which you represent, received a request for information relating to a fatal incident involving a city employee, including photographs, recordings of interviews of two named witnesses, and incident reports. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.¹

We first note that the requestor does not seek access to "the primary [incident report] done by Sgt. Whitford dated 6/5/08." Thus, that report is not responsive to this request for information. This decision does not address the public availability of information that is not responsive to this request, and the city need not release such information in response to the request.

Next, we address your representation that some of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988); 497 at 4 (1988).

Letter No. 2008-13367 (2008). In that decision, we concluded that the city was required to release most of the information at issue because of its failure to comply with section 552.301 of the Government Code in requesting the decision. *See* Gov't Code §§ 552.301(b), .302. We note that section 552.007 of the Government Code prohibits selective disclosure of information that a governmental body has voluntarily made available to any member of the public. *See id.* § 552.007 (b). As a general rule, if a governmental body releases information to a member of the public, the Act's exceptions to disclosure are waived unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See id.*; Open Records Decision Nos. 490 (1988), 400 (1983). You now seek to withhold the previously requested information under section 552.103 of the Government Code. That section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). As such, section 552.103 does not prohibit the release of information or make information confidential under law. In Open Records Letter No. 2008-13367, the city waived section 552.103. Therefore, because the city has released some of the information at issue to the public in response to Open Records Letter No. 2008-13367, the city may not now withhold such information under section 552.103. *See* Open Records Decision No. 673 (2001) (governmental body may rely on attorney general's ruling as previous determination when the records or information at issue are precisely the same records or information that were previously submitted to attorney general pursuant to Gov't Code § 552.301(e)(1)(D); the governmental body that received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; the previous ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

To the extent that the information at issue was not previously released, we note that the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made of, for, or by the city. You do not claim an exception to disclosure under section 552.108. You do claim section 552.103, which is a discretionary exception that may be waived. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; ORD 665 at 2 n.5. As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022(a)(1). Therefore, any submitted information that the city has not previously released may not be withheld under section 552.103.

We note that section 552.130 of the Government Code is applicable to some of the submitted information.² This section is a confidentiality provision for the purposes of sections 552.007 and 552.022. Section 552.130 excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state.³ See Gov't Code § 552.130(a)(1). We have marked Texas driver's license information in the submitted documents that the city must withhold under section 552.130. We note that the submitted representative sample of the videotaped witness interviews also reveals driver's license information. To the extent that the video reveals information relating to a Texas driver's license, any such information must also be withheld under section 552.130. If the video reveals Texas driver's license information, and the city has no means of redacting such information from the video, then the entire video must be withheld under section 552.130. With the exception of information that must be withheld under section 552.130 of the Government Code, the submitted information must be released.⁴

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, 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

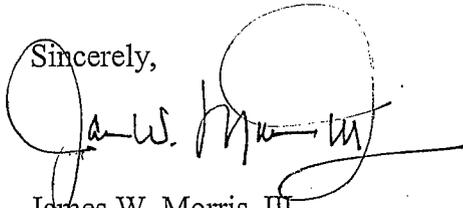
²Unlike other exceptions to disclosure under the Act, this office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

³We note that section 552.130 protects privacy, which is a personal right that lapses at death. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981). Therefore, information relating to a deceased individual may not be withheld under this exception.

⁴We note that the city might ordinarily be required to withhold some of the submitted information to protect the privacy of the deceased employee's family. See *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004). In this instance, however, the requestor is an authorized representative of a family member. As such, the requestor has a right of access to information that the city might be required to withhold from the public on privacy grounds. See Gov't Code § 552.023. Should the city receive another request for these same records from a person who would not have the present requestor's right of access, the city should resubmit these records and request another decision. See *id.* §§ 552.301, .302.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, prominent initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 350194

Enc: Submitted information

c: Requestor
(w/o enclosures)