



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 5, 2009

Mr. Bennett M. Wyse  
Assistant City Attorney  
Messer, Campbell & Brady  
City of Breckenridge  
6351 Preston Road, Suite 350  
Frisco, Texas 75034

OR2009-10867

Dear Mr. Wyse:

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# 351272.

The City of Breckenridge (the "city"), which you represent, received a request for a specified police report and three categories of information pertaining to two named police officers. You state you have released the specified police report to the requestor. You also state that the city does not maintain any information responsive to the portion of the request seeking any documents indicating either named police officer has been terminated or reinstated by the city.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.119, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that all of the information you have submitted in this instance was the subject of a previous request for information received by the city's police department (the "department"). In response to that request, this office issued Open Records Letter No. 2009-03543 (2009). In that ruling, we held that the department failed to demonstrate the applicability of sections 552.103, 552.108, and 552.111 of the Government Code to the requested personnel files and complaint information. We also held that the department must withhold the information we marked under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. Accordingly, we held that, with the exception of the information subject

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

to sections 552.101, 552.117, 552.130, and 552.136, the department must release the personnel files and complaint information. We note that information that has been previously released to the public may not be withheld from a subsequent requestor unless the governmental body is able to demonstrate that the information is confidential by law or that release is prohibited by law. See Gov't Code § 552.007. Although you raise sections 552.103 and 552.108 of the Government Code for the information that was previously ordered to be released, these sections are discretionary exceptions that protect a governmental body's interests and may be waived. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, sections 552.103 and 552.108 do not make information confidential or prohibit its release. Further, the city does not raise any additional arguments to withhold the portions of the submitted information that were previously ordered to be released. We therefore conclude that the city must continue to withhold or release the submitted information in accordance with Open Records Letter No. 2009-03543 (2009).<sup>2</sup>

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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

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<sup>2</sup>We note that because the information you seek to withhold under section 552.102 of the Government Code was previously disposed of under section 552.101 of the Government Code in conjunction with common-law privacy, we need not address your argument under this exception. Similarly, we do not address your argument to withhold information under section 552.119 because our previous ruling disposed of this information under section 552.130 of the Government Code.

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)