



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2009

Ms. Sylvia McClellan
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2009-12912

Dear Ms. McClellan:

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# 359718 (OR# 2009-5259).

The Dallas Police Department (the "department") received a request for the personnel file of a named officer.¹ You state that some responsive information has been released to the requestor. You claim that some of the requested information is excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note, and you acknowledge, that the requestor has excluded from the request the following types of information: social security numbers, NCIC/TCIC (CCH) reports, vehicle

¹The requestor excluded from the request the following types of information: social security numbers, NCIC/TCIC (CCH) reports, vehicle information, home addresses and telephone numbers, family member information, polygraph test results, and medical information.

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information, home addresses and telephone numbers, family member information, polygraph test results, and medical information. Accordingly, any such information within the submitted information is not responsive to the present request for information. The department need not release nonresponsive information and this ruling will not address it.

Next, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You state that the department received the present request for information on July 1, 2009. However, the department did not ask for the attorney general's opinion or submit the information required under section 552.301(e) until August 25, 2009. Thus, we find the department failed to comply with both its ten- and fifteen-business-day deadlines.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption 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); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating 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). You seek to withhold some of the submitted information under section 552.136 of the Government Code. Because section 552.136 can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to the submitted information.

Section 552.136(b) states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. You inform us that employee identification numbers are also used as the employees' credit union bank account numbers. Based on this representation, the department must withhold the

employee identification numbers that you have marked under section 552.136 of the Government Code. The remaining responsive information must be released to the requestor.

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 information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 359718

Enc. Submitted documents

c: Requestor
(w/o enclosures)