



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2009

Ms. Sylvia McClellan
Assistant City Attorney
City of Dallas
1400 S. Lamar
Dallas, Texas 75215

OR2009-18057

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# 364940 (DPD Request No. 2009-8021).

The Dallas Police Department (the "department") received a request for information related to two specified investigations. You claim that the requested information is excepted from disclosure under sections 552.117 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that portions of the requested information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-17829 (2009). In this ruling, we concluded that the department must withhold certain information under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code. With regard to the requested information that is identical to the information previously requested and ruled upon by this office in this prior ruling, we conclude, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department must continue to rely on Open Records Letter No. 2009-17829 as a previous determination and withhold or release the identical information in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from

disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

Next, we must address the department's obligations under section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. Section 552.301(e) requires a governmental body to submit to this office within fifteen business days of receiving the 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. *See id.* § 552.301(e)(1)(A)-(D). The department states, and the submitted documents reflect, that the department received this request for information on September 30, 2009. We note that this office does not count the date the request was received or a holiday as business days for the purpose of calculating a governmental body's deadlines under section 552.301. Accordingly, the fifteenth business day after the receipt of the instant request was October 21, 2009. The department submitted the documents at issue and written comments bearing a postmark date of October 22, 2009. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the department failed to comply with its fifteen-business-day deadline under section 552.301(e).

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exception at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Because sections 552.117 and 552.136 of the Government Code can provide compelling reasons to overcome this presumption, we will consider your arguments under these sections.

You claim portions of the submitted information are protected under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government

Code.¹ Gov't Code § 552.117(a)(2). We note that because section 552.117 protects personal privacy, the requestor has a special right of access to private information concerning himself that would generally be excepted from public disclosure.² See Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the department must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Next, you assert some of the remaining information is protected by section 552.136 of the Government Code, which provides that "[n]otwithstanding any other provision of [the Act], 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." *Id.* § 552.136(b); see *id.* § 552.136(a) (defining "access device"). You inform us an employee's identification number is used in conjunction with one additional digit in order to access the employee's credit union account. However, section 552.136 is also based on privacy principles. Thus, the requestor has a right of access to an access device number that relates to him. See *id.* § 552.023(a); ORD 481 at 4. Thus, the requestor's identification number, which we have marked, must be released. However, we find the department must withhold the remaining identification numbers you have marked under section 552.136 of the Government Code.

In summary, the department must continue to rely on Open Records Letter No. 2009-17829 as a previous determination and withhold or release the identical information in accordance with this ruling. The department must withhold the information we have marked under section 552.117(a)(2) of the Government Code. With the exception of the number we have marked for release, the department must withhold the identification numbers you have marked under section 552.136 of the Government Code. The remaining information must be released.³

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

¹"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

³Because such information may be confidential with respect to the general public, if the department receives another request for this information from an individual other than this requestor, the department should again seek our decision.

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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 364940

Enc. Submitted documents

c: Requestor
(w/o enclosures)