



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 31, 2011

Mr. Jason Day  
City Attorney  
City of Royse City  
P.O. Box 638  
Royse City, Texas 75189

OR2011-01607

Dear Mr. Day:

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# 407737 (RCCA10-0250).

The City of Royse City (the "city") received a request for the amount of time a named city police officer has been an officer, the "win/loss record" on traffic tickets issued by the named officer, and any other information regarding the named officer. You state the city has released some information to the requestor. You also state the city does not have any information responsive to the request for the "win/loss record" of traffic tickets issued by the named officer.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.102, 552.103, 552.108, 552.117, 552.130, and 552.147 of the

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note a portion of the submitted documents is subject to section 552.022 of the Government Code. Pursuant to section 552.022(a)(1) of the Government Code, “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” is expressly public unless excepted under section 552.108 of the Government Code or expressly confidential under “other law.” Gov’t Code § 552.022(a)(1). The submitted information contains completed observation reports that are subject to section 552.022(a)(1). Although you raise section 552.103 of the Government Code for this information, section 552.103 is a discretionary exception to disclosure that protects the 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not “other law” that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold the submitted observation reports under section 552.103. However, section 552.130 of the Government Code is a mandatory exception to disclosure that is “other law” for purposes of section 552.022. Thus, we will address the applicability of section 552.130 to information in the observation reports.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). The city must withhold the Texas license plate numbers we marked in the submitted information under section 552.130 of the Government Code.<sup>4</sup>

We next turn to the information not subject to section 552.022 of the Government Code. Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the

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<sup>2</sup>Although you claim section 552.1175 for portions of the submitted information, section 552.117 is the proper exception to raise in this instance because the city holds the information at issue in an employment capacity.

<sup>3</sup>We assume 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.

<sup>4</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information it seeks to withhold. To meet this burden, the governmental body must demonstrate (1) litigation was pending or reasonably anticipated on the date of its receipt of the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *See Open Records Decision No. 551 at 4 (1990).*

In this instance, you state the city has filed criminal charges against the requestor. The remaining information you marked under section 552.103 consists of a form the named officer completed to enroll in the Texas Municipal Retirement System as a city employee. You do not provide any information about the nature of the pending charge and how the submitted enrollment form relates to it. Thus, we find you failed to show how the information at issue relates to the pending litigation, and the submitted information may not be withheld under section 552.103.

You also claim the submitted enrollment form is subject to section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state the information you marked in green relates to a pending traffic violation charge. However, you provide no explanation for how the submitted enrollment form, which is purely administrative in nature, relates to the traffic violation or any other criminal case such that release of this form would interfere with that case. *Cf. Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to records of administrative investigation that

did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982) (statutory predecessor to section 552.108 not applicable to internal affairs investigation file when no criminal charge against officer results from investigation of complaint against police officer). Therefore, we find you failed to demonstrate that section 552.108 is applicable to the information you marked, and that information may not be withheld on that basis.

Section 552.117(a)(2) of the Government Code 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. Gov't Code § 552.117(a)(2). For purposes of section 552.117, "peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure. Upon review, we find the city must withhold the information you marked in blue, as well as the social security numbers you marked in purple, under section 552.117(a)(2) of the Government Code.<sup>5</sup>

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010) (Dec. 20, 2010, motions for reconsideration and rehearing pending). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code. The remaining information, however, is not excepted under section 552.102(a) and may not be withheld on that basis.

Finally, we understand you to raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. In this instance, the document you seek to withhold is a form used by the named officer to enroll in the city's retirement system, which is a financial transaction with the city. This office has determined there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan

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<sup>5</sup>As our ruling is dispositive for the social security numbers you marked in purple, we need not address your argument under section 552.147 against their disclosure.

funded party or wholly by governmental body is not excepted from disclosure). Thus, financial information related to such transactions is generally not excepted from disclosure on the basis of common-law privacy. Therefore, because there is a legitimate public interest in the financial information at issue, it may not be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the information we marked under sections 552.102 and 552.130 of the Government Code, as well as the information you marked in blue and purple under section 552.117(a)(2) of the Government Code. The remaining submitted 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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tf

Ref: ID# 407737

Enc. Submitted documents

c: Requestor  
(w/o enclosures)