ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

Ms. Tiffany Bull
Assistant City Attorney
Arlington Police Department
P.O. Box 1065 Mail Stop 04-0200
Arlington, Texas 76004-1065

OR2011-06277

Dear Ms. Bull:

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# 416594 (Reference No. 3208).

The Arlington Police Department (the "department") received a request for a specified report. You claim some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

We note some of the submitted information, which we have marked, is not part of the requested police report and thus is not responsive to this request for information. This decision does not address the public availability of the non-responsive information, which need not be released in response to this request.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov't Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). The statutory

predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques, but was not applicable to generally known policies and procedures. *See* Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information regarding location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution); *but see* Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the submitted information reveals the identity of a police officer working in an undercover capacity and details of how and where an undercover operation was conducted. You contend the officer's training and experience in undercover police work would become useless if the officer's identity is revealed to the public. You also contend release of the details of the undercover operation would interfere with future detection of criminal activity by alerting the public as to how and where such operations are conducted. Based on your representations and our review of the information at issue, we conclude release of the information we have marked would interfere with law enforcement and crime prevention. Therefore, the department may withhold the marked information under section 552.108(b)(1) of the Government Code. We conclude the department has not demonstrated section 552.108(b)(1) is applicable to any of the remaining information at issue and may not withhold any of the remaining information on that basis.

We note section 552.130 of the Government Code is applicable to some of the remaining information. This section excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state.[1] *See* Gov't Code § 552.130(a)(1)-(2). The Texas driver's and motor vehicle information we have marked falls within the scope of section 552.130. In this instance, however, the requestor may be an authorized representative of the individual to whom the driver's license and motor vehicle information pertains. Because section 552.130 protects personal privacy, the requestor has a right of access to the marked information under section 552.023 of the Government Code if she is the individual's authorized representative. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).[2] In that event, the marked driver's license and motor vehicle information may not be withheld under section 552.130 and must be released. If the requestor is not the individual's authorized

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[1]This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

[2]Section 552.023 provides in part 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).

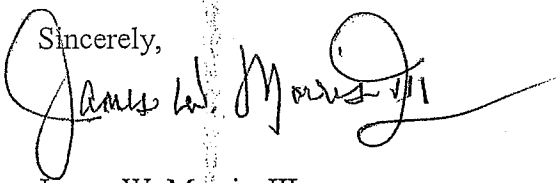
representative, then the department must withhold the information under section 552.130 of the Government Code.[3]

In summary, the department (1) may withhold the information we have marked under section 552.108(b)(1) of the Government Code and (2) must withhold the marked Texas driver's license and motor vehicle information under section 552.130 of the Government Code, unless the requestor has a right of access to the information under section 552.023 of the Government Code.[4] The department must release the rest of the submitted information.

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,



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

JWM/em

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[3]We note Open Records Decision No. 684 (2009) is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code.

[4]We note the remaining information includes a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right to the social security number, however, if she is an authorized representative of the individual to whom it pertains. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

Ref: ID# 416594

Enc: Submitted documents

c: Requestor
(w/o enclosures)