



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 23, 2012

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2012-07871

Dear Ms. Graham:

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# 454420.

The Mesquite Police Department (the "department") received two requests for information pertaining to a specified incident. You state the department has released some of the requested information. You inform us information related to a 9-1-1 call will be withheld pursuant to the previous determination issued to the department under section 552.101 of the Government Code in conjunction with section 772.118 of the Health and Safety Code in Open Records Letter No. 2011-15075 (2011). You also state the department will withhold the motor vehicle lien information you have marked pursuant to the previous determination issued to the department under section 552.101 in conjunction with common-law privacy in Open Records Letter No. 2012-01375 (2012). You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the information you seek to withhold under section 552.101 of the Government Code in conjunction with common-law privacy is subject to a previous determination issued by this office in Open Records Letter No. 2012-06459 (2012). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

In Open Records Letter No. 2012-06459, this office issued a previous determination authorizing the department to withhold information in a call sheet that reveals the price of a motor vehicle under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, the department must withhold such information in accordance with Open Records Letter No. 2012-06459.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes, such as section 143.090 of the Local Government Code. You state that the City of Mesquite is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters’ and Police Officers’ Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov’t Code § 143.090. You state photographs 5 and 17 and the submitted video recordings contain visual images of department police officers. Upon review, we conclude the department must withhold photographs 5 and 17 under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. However, the legislative history for section 143.090 indicates the legislature did not intend to extend the statute’s protection to video recordings. Hearings on H.B. 2006 Before the House Comm. on Urban Affairs, 82nd Leg., R.S. (March 30, 2011) (bill’s author, Rep. Bonnen, explained statute’s protection limited to photographs and does not protect video). Accordingly, no portion of the submitted video recordings may be withheld under section 552.101 on this basis.

You state you will redact discernible Texas license plate numbers from the submitted call sheets, video recordings, and photographs 1 through 4, 8, 12, 14, 16, 18, 19, 22, 24, 26, 28, 29, 36, 41, 42, and 43 under section 552.130 of the Government Code pursuant to Open

Records Decision No. 684 (2009). Open Records Decision No. 684 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 license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number under section 552.130 of the Government Code. Upon review, however, we find photographs 3, 12, 14, 19, 26, 28, and 43 do not contain images of a discernible Texas license plate number or partial Texas license plate number. This information is not subject to Open Records Decision No. 684 and may not be withheld without requesting an attorney general decision. Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We find the department must withhold the information you have marked in the call sheet, the license plate numbers on the audio portion of video recording number 313452, the images of discernible out-of-state license plate numbers in the submitted video recordings and photographs 12, 14, 19, 26, and 28, and the vehicle identification numbers ("VINs") in photographs 3 and 43 under section 552.130 of the Government Code.

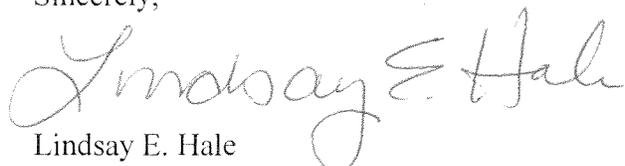
In summary, the department must withhold the information you have marked that reveals the price of a motor vehicle in accordance with Open Records Letter No. 2012-06459. The department must withhold photographs 5 and 17 under section 552.101 of the Government Code in conjunction with section 143.090 of the Local Government Code. The department must withhold the information you have marked in the call sheet, the license plate numbers on the audio portion of video recording number 313452, the images of discernible out-of-state license plate numbers in the submitted video recordings and photographs 12, 14, 19, 26, and 28, and the VINs in photographs 3 and 43 under section 552.130 of the Government Code. The department must release the remaining information.

You also ask this office to issue a previous determination that would permit the department to withhold information pertaining to a motor vehicle registration under section 552.130(a)(2) of the Government Code, contained in call sheets, without the necessity of requesting a decision under section 552.301 of the Government Code. *See id.* § 552.301(a); ORD 673. Having considered your request, we decline to issue such a previous determination at this time. Accordingly, 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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 454420

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)