



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2013

Ms. Angela Hahn
Records Coordinator
City of Brenham
P.O. Box 1059
Brenham, Texas 77834-1059

OR2013-00733

Dear Ms. Hahn:

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# 475865.

The City of Brenham (the "city") received a request for the personnel file of a former police officer and the names, positions, and salaries of all city employees. You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you state the city lacks the technological capability to review some of the submitted audio and video recordings and assert you do not have to purchase software or hardware to accommodate a request. You cite section 552.228(b) of the Government Code for your request to withhold information because you do not have the technological capability to review such information. Section 552.228(b) provides in relevant part:

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

...

(2) the governmental body is not required to purchase any software or hardware to accommodate the request[.]

Gov't Code § 552.228(b)(2). Section 552.228(b) applies when the requestor requests information be provided to him in a specified medium, such as diskette or magnetic tape. *See id.* § 552.228(b)(2). In this instance, the requestor seeks the personnel file or work record of a named former police officer and does not specify the requested information be provided in a particular medium. Thus, we find section 552.228(b) is not applicable in this instance. We note section 552.226 of the Government Code states the Act does not authorize the removal of an original copy of a public record from the office of a governmental body. *Id.* § 552.226. However, section 552.228(a) explicitly requires a governmental body to provide "a suitable copy" of public information within a reasonable time after the date on which the information is requested. *Id.* § 552.228(a). Further, section 552.221(a) provides "an officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer." *See id.* § 552.221(a); *Moore v. Collins*, 897 S.W.2d 496, 499 (Tex. App.—Houston [1st Dist.] 1995, no writ) (holding section 552.221 required governmental body to respond to request for information either by presenting requestor with the requested information for copying or by informing him it was in active use or storage); Open Records Decision Nos. 682 at 7 (2005) (section 552.221 requires governmental body to either provide information for inspection or duplication or send copies of information by first-class mail.), 512 at 1 (1988) (predecessor provisions of the Act gives requestor option to take notes from original documents, pay for copies of public records, or both). The language of section 552.221 does not give the public information officer the discretion to choose whether to comply; upon request for the information, the officer must make the information available as required under section 552.221. *Moore*, 897 S.W.2d at 499. Thus, the city must comply with the Act in responding to the present request for information. Accordingly, we will address your argument against disclosure of the submitted information.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license or driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Upon review, we find the submitted video recordings contain motor vehicle record information subject to section 552.130. You state the city does not have the technological capability to redact information contained in the submitted video recordings. Thus, the city must withhold the video recordings we have indicated in their entireties under section 552.130 of the Government Code.¹ The remaining information must be released.²

¹When a video recording contains confidential information is that is inextricably intertwined with disclosable information and a governmental body lacks the technological capability to redact such information, the video recording must be withheld in its entirety. *See* Open Records Decision No. 364 (1983).

²One of the submitted audio recordings contains 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 an attorney general decision under the Act. *See* Gov't Code § 552.147(b); *see also* ORD 364.

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,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 475865

Enc. Submitted documents

c: Requestor
(w/o enclosures)