



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 10, 2013

Mr. Gary B. Lawson  
Counsel for the Dallas Police & Fire Pension System  
Strasburger & Price, LLP  
901 Main Street, Suite 4400  
Dallas, Texas 75202-3794

OR2013-05718

Dear Mr. Lawson:

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# 483608.

The Dallas Police and Fire Pension System (the "system"), which you represent, received a request for a copy of all photographs provided to a specified requestor in a request dated June 29, 2012. You indicate some of the submitted information may be protected by copyright. We have considered your arguments and reviewed the submitted information.

We first address your assertion that the requested information has been released to the requestor's company through a previous request. Generally, section 552.232 of the Government Code outlines the procedures a governmental body must follow in responding to a repetitious or redundant request from the same requestor. Gov't Code § 552.232. Although you inform us the requested information was previously provided to another individual with the requestor's company, we note you inform us the present requestor is not the same individual who previously requested the photographs at issue from the system. Accordingly, you have failed to establish this is a repetitious or redundant request for purposes of the Act. Thus, we will address the public availability of the submitted information.

Next, we must address the applicability of section 552.007 of the Government Code to the submitted information. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by

law or the information is confidential under law. *See id.* 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Based on our review of the submitted information, we understand the system has already released the requested photographs to the public. Accordingly, as the information has already been released to the public, the system may not withhold the submitted information unless its release is expressly prohibited by law or the information is confidential by law. In this instance, the submitted information contains information excepted from disclosure under section 552.130 of the Government Code.<sup>1</sup> Because section 552.130 makes information confidential under the Act, we will address the applicability of this exception to the submitted information.

Next, you note the requestor states he prefers to receive copies of the requested information in electronic format. Section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. *See Gov't Code* § 552.228(b)(1), (2). However, you state, "the [s]ystem has grave concerns that electronic images of photographs may be readily altered," and therefore, seek to withhold the submitted electronic images from release. We note, however, this office has determined the Act does not permit the consideration by a governmental body or this office of a requestor's intended use of information when responding to open records requests. *See id.* § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision Nos. 508 at (1988) (motives of a person seeking information under the Act are irrelevant), 51 (1974). Additionally, a governmental body is not responsible for the use that may be made of information that it releases to the public. *See Gov't Code* § 552.204; ORD 508 at 3 (use that may be made of information does not control whether it falls within exception to disclosure). A governmental body must release the information to which a requestor seeks access unless the information falls within the scope of an exception to public disclosure under the Act. *See Gov't Code* § 552.221; Open Records Decision No. 664 (2000). You have submitted the requested information to this office for review in an electronic format. Accordingly, we understand the system has the technological capability to provide the requested information to the requestor in electronic format. Accordingly, to the extent the submitted information is subject to release, the system must provide the submitted information to the requestor in electronic format. *See Gov't Code* § 552.228(c).

Some of the submitted photographs contain discernible license plates. Section 552.130(a)(2) of the Government Code provides that information relating to a motor vehicle title or registration issued by an agency of this state, or another state or country, is excepted from

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

public release. *Id.* § 552.130(a)(2). The system must withhold the discernible license plates in the submitted photographs under section 552.130(a)(2) of the Government Code.

You indicate some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the system must withhold the discernible license plates in the submitted photographs under section 552.130(a)(2) of the Government Code. The remaining information must be released; however, any information subject to copyright may be released only in accordance with copyright law.

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,

  
Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 483608

Enc. Submitted documents

c: Requestor  
(w/o enclosures)