



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 14, 2015

Ms. Judith N. Benton
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2015-16873

Dear Ms. Benton:

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# 575393 (LGL-15-161, LGL-15-209).

The City of Waco and the Waco Police Department (collectively, the "city") received two requests from different requestors for information pertaining to a specified incident and information pertaining to a specified property during a specified time period. You state the city will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code 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(a)(1) 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). You

¹We understand you to raise sections 552.130 and 552.147 of the Government Code based on your markings.

state the information the city has marked relates to a pending criminal investigation. Based upon this representation and our review, we find release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the city may withhold the information you have marked under section 552.108(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the first requestor has a right of access to her own motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from her under section 552.130. *See id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles): Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We also note the first requestor may be acting as the authorized representative of her spouse. Accordingly, if the first requestor is acting as the authorized representative of her spouse, she has a right of access to the information you have marked under section 552.023, and the city may not withhold the marked information from her on the basis of section 552.130. If the first requestor is not acting as the authorized representative of her spouse, the city must withhold the information you have marked under section 552.130 of the Government Code. The city must withhold from the second requestor the motor vehicle record information it has marked and the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Gov't Code* § 552.147(a). In this instance, the submitted information includes the social security number of the first requestor's spouse. We note section 552.147 is based on privacy principles. *See id.* § 552.023(a); ORD 481 at 4. Thus, if the requestor is acting as the authorized representative of her spouse, she has a right of access to her spouse's social security number pursuant to section 552.023 of the Government Code and it may not be withheld from her under section 552.147 of the Government Code. However, if the first requestor is not acting as the authorized representative of her spouse, the city may withhold the social security number you have marked under section 552.147 of the Government Code. The city may withhold the social security number you have marked under section 552.147 of the Government Code from the second requestor.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The city informs us the information it has marked relates to police officers who assisted with a specified incident involving gang members. You state there is credible evidence the members of the gangs involved in the incident will retaliate against those involved in the investigation of the incident. The city states release of this information would subject these officers to a substantial threat of physical harm. Based on the city's representations and our review, we find the city has demonstrated the release of the information at issue would subject the officers at issue to a substantial threat of harm. Thus, the city must withhold the information it has marked under section 552.152 of the Government Code.²

In summary, the city may withhold the information it has marked under section 552.108(a)(1) of the Government Code. If the first requestor is not acting as the authorized representative of her spouse, the city must withhold the information you have marked under section 552.130 of the Government Code. The city must withhold from the second requestor the motor vehicle record information it has marked and the motor vehicle record information we have marked under section 552.130 of the Government Code. If the first requestor is not acting as the authorized representative of her spouse, the city may withhold the social security number you have marked under section 552.147 of the Government Code. The city may withhold the social security number you have marked under section 552.147 of the Government Code from the second requestor. The city must withhold the information it has marked under section 552.152 of the Government Code. The remaining information must be released.

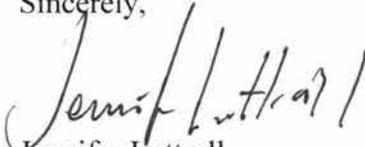
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the printed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 575393

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)