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ATTORNEY GENERAL OF TEXAS

September 14, 2015

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

OR2015-19063

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# 578889 (Ref. No. 15-863).

The City of Waco (the "city") received a request for a specified search warrant and search warrant affidavit. You claim portions of the submitted information are excepted from disclosure under section 552.152 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor.<sup>1</sup> *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the submitted search warrant is subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record[.]" unless the information is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(17). The city seeks to withhold portions of the search warrant under section 552.152 of the

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<sup>1</sup>The requestor asserts the city did not comply with the requirements of section 552.301 of the Government Code. *See generally* Gov't Code § 552.301(b), (e). However, the city raises only section 552.152 of the Government Code, which is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the city's claim under that section.

Government Code. Because section 552.152 makes information confidential for purposes of section 552.022, we will address its applicability to the information at issue within the search warrant. Further, we will address the city's argument under section 552.152 against disclosure of portions of the search warrant affidavit.

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.

*Id.* § 552.152. The city states the information it has marked pertains to a criminal incident that resulted in the death of several individuals and the arrest of numerous gang members. The city explains there is credible intelligence suggesting there will be retaliation by the gang members against the officers of the city's police department involved in the investigation of the incident. Thus, the city contends the release of the identifying information of these officers would jeopardize the officers' safety. 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. Therefore, the city must withhold the information it has marked under section 552.152 of the Government Code. As the city does not raise another exception, the city must release the remaining 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 578889

Enc. Submitted documents

c: Requestor  
(w/o enclosures)