



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2016

Mr. Zachary Brown
Assistant General Counsel
Texas Department of Criminal Justice - Office of General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2016-17514

Dear Mr. Brown:

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# 621187.

The Texas Department of Criminal Justice (the "department") received a request for photographs of specified employees. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *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 requestor contends, and we agree, the department failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code. Section 552.301(e-1) requires a governmental body that submits written comments to the attorney general under section 552.301(e)(1)(A) to send a copy of those comments to the

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1). The department and the requestor agree that the instant request was received by the department on May 16, 2016. The department informs is it was closed on May 30, 2016 in observance of Memorial Day. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. As such, the fifteen-business-day deadline was June 7, 2016. The requestor contends, and provides documentation demonstrating, that the department's written comments were sent to the requestor in an envelope meter-marked June 8, 2016. Consequently, we conclude that, in sending the requestor a copy of its written comments, the department did not comply with section 552.301 of the Government Code. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first-class United States mail, common or contract carrier, or interagency mail).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). The department claims sections 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302). Accordingly, the department may not withhold any portion of the submitted information under section 552.108 of the Government Code. However, we note section 552.152 of the Government Code makes information confidential and can provide a compelling reason to overcome the presumption of openness.² Therefore, we will address the applicability of this section to the submitted information.

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 [required public disclosure] if, under the specific circumstances pertaining to the employee or

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. You state release of the submitted department employees' photographs would mark them as targets and subject them to a substantial risk of physical harm. Based on your representations and our review, we conclude you have demonstrated release of the submitted information would subject the department employees to a substantial threat of physical harm. Therefore, the department must withhold the submitted information under section 552.152 of the Government Code.

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

Sincerely,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 621187

Enc. Submitted documents

c: Requestor
(w/o enclosures)