



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2017

Mr. Zachariah T. Evans
Counsel for City of Balch Springs
Akers & Akers LLP
13809 Research Blvd., Suite 250
Austin, Texas 78750

OR2017-07234

Dear Mr. Evans:

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# 652726.

The City of Balch Springs (the "city"), which you represent, received a request for photographs of named police officers. You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 of the Government Code encompasses section 143.090 of the Local

¹We note, and you acknowledge, the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will address the applicability of this exception to the submitted information, notwithstanding the city's violation of section 552.301 in requesting this decision.

Government Code. You state the city is a civil service city under chapter 143 of the Local Government Code. Section 143.090 provides as follows:

A department, [the Fire Fighters' and Police Officers' Civil Service Commission], or municipality may not release a photograph that depicts a police officer unless:

- (1) the officer has been charged with an offense by indictment or by information;
- (2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;
- (3) the photograph is introduced as evidence in a judicial proceeding;
or
- (4) the officer gives written consent to the release of the photograph.

Local Gov't Code § 143.090. You inform us the police officer depicted in the photograph has not provided the city with written consent regarding the release of the photograph. You further inform us none of the remaining exceptions under section 143.090 are applicable. Therefore, the city must withhold the photograph under section 552.101 of the Government Code in conjunction with section 143.090 of the Local 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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 652726

Enc. Submitted documents

c: Requestor
(w/o enclosures)