

Thomas D. Collinsworth

October 29, 2020

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

To Whom It May Concern:

On September 22, 2020, I requested from the Flower Mound Police Department/the Town of Flower Mound records on Police Officer Augusto Espinosa (#373) pursuant to the Texas Public Information Act. The town's representing law firm, Taylor Olson Adkins Sralla & Elam L.L.P ("TOASE"), gave a response that "sections 552.130 and 552.024 allow us to withhold these types of information without requesting a ruling from the attorney general." This is my appeal to the Office of the Attorney General about the withholding of such information. Please note the following in regards to this communication:

- The Town of Flower Mound/TOASE is filing their own appeal (dated October 6, 2020) in regards to other aspects of my Texas PIA request.
- I did not receive notice of my need to file a separate appeal until October 26, 2020.¹
- TOASE's communication to me (attached) states that there are documents enclosed in response to my request. There were no such documents attached. This appears to be an error from using boilerplate language, and they appear to be waiting for a response from their appeal before releasing any records on Augusto Espinosa to me in regards to my request.

The following was my Texas Public Information request without the greetings and pleasantries:

Pursuant to the Texas Public Information Act, I hereby request the following records:

I would like a copy of the records on Police Officer Augusto Espinosa (#373) kept to fulfill the requirements for the following retention schedule record numbers:

(Format: Record Number - Record Title)

GR1050-03 - Awards and Commendations
GR1050-04 - Certificates and Licenses
GR1050-07 - Disciplinary and Adverse Action Records
GR1050-11 - Employee Selection Records
GR1050-12 - Employee Service Records
GR1050-14(a-c) - Employment Applications
GR1050-21 - Job Evaluations
GR1050-23 - Oaths of Office
GR1050-24 - Personnel Action or Information Notices
GR1050-28a - Training and Educational Achievement Records

PS4075-01(a-e) - Internal Affairs Investigation Records

¹ This can be confirmed at <https://www.muckrock.com/foi/flower-mound-2857/flower-mound-tx-police-department-officer-employment-history-102582/> or bit.ly/fmtxpdo

PS4075-02 - Off-Duty Assignment Records
PS4325-01 - Police Academy Records
PS4325-02 - Weapons Proficiency Tests

Please redact private information such as Social Security numbers, grades on transcripts from institutions of higher education and high schools, GED scores, personal phone numbers, and home addresses.

For your convince, here are the record descriptions and remarks for the above record numbers:

Local Schedule GR:

https://www.tsl.texas.gov/slr/localretention/schedule_gr

Local Schedule PS:

https://www.tsl.texas.gov/slr/localretention/schedule_ps

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Information was withheld from me because of confidentiality concerns regarding Section 552.130 of the Texas Government Code in relation to:

- a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; or
- a motor vehicle title or registration issued by an agency of this state or another state or country; or
- a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

TOASE did not specify what documents they are claiming under these exceptions. But I assume it includes a driver's license, possibly the Vehicle Identification Number(s) and license plate number(s) of the vehicle(s) assigned to the officer, and identifying cards issued by the police department and possibly other government agencies.

In regards to the driver's license, it is of utmost importance to know that a Texas police officer is licensed to drive a vehicle. While certain information like the Texas driver's license number is clearly personal information (*See* Transp. Code § 730.007(a)-(b)) that should be redacted, other information like name, date of birth, and issue and expiration date of the driver's license should be made available to ensure the public that a police officer isn't being allowed to drive without a license.

A far as Vehicle Identification Numbers (VINs) and license plates numbers are concerned, I believe Open Records Decision No. 684 and Open Records Letter Ruling OR2009-06046 are being used to include license plate numbers and possibly VINs in the definition of Tex. Gov't Code §552.130.

However, the language of both documents make it clear that this inclusion of license plate numbers is only for citizen privacy, not for records on public personnel. ORD-684 mentions excluding from release "a Texas license plate number, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number. [...] This decision does not apply to motor vehicle information in a peace officer's accident report [...] (concerning release of information relating to motor vehicle accidents)." Since it would be only or mostly citizen license plates in these situations (e.g. a peace officer's dash camera recording), then the intent of the ruling is to protect private citizen information from being released in a Texas Public Information Act request unless they are directly involved in and the release is related to a motor vehicle accident. This is further supported by the fact that OR2009-06046, a ruling on the El Paso Police Department involving an officer shooting, only mentioned withholding license plate information on photographs, videos, and incident reports. Again, this is information that would be comprised mostly, if not entirely, of private vehicles that got caught up, through no fault of their own actions, in a police incident. Clearly, the intention of these rulings is to protect citizens from having their private information released to the public/media when they were neither the potential criminal nor victim of a crime. Just how many people would expect their personal phone numbers and email addresses to generally not be available on a government website viewable by the public but would expect the official phone numbers and email addresses of government employees to be easily accessible to the public, the same logical should apply to license plate numbers for marked police vehicles. Since revealing the Vehicle Identification Numbers assigned to police vehicles shouldn't provide any personal information, they should also be allowed to be released as long as they aren't vehicles used in undercover operations.

While 730 of the Transportation Code could be broadly interpreted to include license plate numbers, though this is never specifically mentioned in the statute, as a reason to deny the information requested, keep in mind that the intent of this law is to "protect the interest of an individual in the individual's *personal* privacy by prohibiting the disclosure and use of *personal* information contained in motor vehicle records, except as authorized by the individual or by law." (Emphasis added.) Again, there has to be a distinction between personal information being protected and government information being wrongly withheld from the public. The license plate numbers of vehicles purchased with our taxes dollars and a law enforcement officer's license to drive (excluding certain parts of the license like home address and driver's license number) falls in the latter unless there is a unique justification. The same logic applies to "personal identification document issued by an agency of this state or another state or country or a local agency" if that person is in a government position of authority, especially when it comes to law enforcement.

Ultimately, Texas Government Code Sec. 552.130(a) was designed for the private citizen. When a private citizen become a public worker, certain information is now determined to be public. That doesn't mean section 552.130 doesn't apply at all, but a heavy redacted driver's license is more fitting in this situation than providing no driver's license at all.

Sincerely,



Thomas D. Collinsworth

Enc. Letter from TOASE to Thomas Collinsworth



6000 WESTERN PLACE, SUITE 200
1-30 AT BRYANT IRVIN ROAD
FORT WORTH, TEXAS 76107
EMAIL: TOASE@TOASE.COM

TAYLOR · OLSON · ADKINS · SRALLA · ELAM

ATTORNEYS & COUNSELORS

TELEPHONE: (817) 332-2580
TOLL FREE: (800) 318-3400
FACSIMILE: (817) 332-4740
WEBSITE: WWW.TOASE.COM

Stacie S. White
swhite@toase.com

October 6, 2020

Thomas Collinsworth
MuckRock News
DEPT MR 102582
411A Highland Avenue
Sommerville, MA 02144-2516

Re: Public Information Request to the Town of Flower Mound Dated September 22, 2020

Dear Mr. Collinsworth:

I represent the Town of Flower Mound regarding the above-referenced matter. The Town received your request for information dated September 22, 2020. Enclosed are the documents and information responsive to your request. The rest of your request is being processed in accordance with the Texas Public Information Act.

The information you requested contains information that relates to:

- a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; or
- a motor vehicle title or registration issued by an agency of this state or another state or country; or
- a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

This information is confidential under Section 552.130 of the Texas Government Code. Our office is prohibited by law from releasing this information to you, and therefore we have removed this information from the enclosed information we are providing to you.

Additionally, the information you requested contains the home address, home telephone number, emergency contact information, social security number, and/or family member information of a public employee or official. This type of information is confidential under section 552.024 of the Texas Government Code. As allowed by section 552.024 of the Texas Government Code, this public employee or official has chosen to make this personal information confidential. Our office is prohibited by law from releasing this personal information to you, and therefore we have removed this information from the enclosed information we are providing to you.

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Normally, we must request a ruling from the Texas Attorney General before we can withhold any of the information you requested. However, sections 552.130 and 552.024 allow us to withhold these types of information without requesting a ruling from the attorney general

You have the right to appeal our decision to withhold this information from you. Instructions for appeal are enclosed with this letter. If you do not want to appeal, you do not need to do anything else. Please note that we are only withholding the specific categories of information mentioned and clearly labeled in the responsive documents. We will process the rest of your request for information in accordance with the terms of the Public Information Act.

The Town understands the rights of all citizens to make requests for public information and invites all citizens to avail themselves of that right. Should you have any questions, please do not hesitate to contact me. Of course, all questions may also be forwarded to the Office of the Texas Attorney General, Open Government Hotline, at (512) 478-6736 or toll-free at 1-877-673-6839.

Sincerely,

Stacie S. White

Stacie S. White

w/ permission

AKKwh

SSW:mar
Enclosures

**How to Appeal the Withholding of Information Under
Government Code Section 552.130**

If you wish to appeal the withholding of information discussed on the previous page, you must send the following to the attorney general:

1. A signed, written statement indicating your wish to appeal the withholding of information;
2. The name of the governmental body that withheld information from you;
3. The date you made your original request for information; and
4. A copy of your original request for information, or if you are unable to provide a copy, a description of your original request for information.

You may also submit written comments stating why you think the information should be released to you, but you are not required to do so.

Send your appeal by mail or fax to the attorney general at:

Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548
Fax: 512-463-2092

Within forty-five business days after receiving all of the above-listed items necessary to file your appeal, the attorney general will issue a written ruling on the matter. You will receive a copy of this ruling in the mail.

October 6, 2020

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bcc: Nayla Marquez (w/o enclosures)
Records Clerk
Flower Mound Police Department
4150 Kirkpatrick Lane
Flower Mound, Texas 75028
PD550-20