



October 1, 2001

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2001-4385

Dear Ms. Jimenez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152627.

The Nueces County Human Resources Office (the "county") received a written request for information pertaining to, among other things, applicants for the position of Deputy Director of Training for the Texas Police Corps. You indicate that the requested records have been released to the requestor, but you contend that certain information in the records is excepted from required public disclosure under sections 552.117(2) and 552.130(a)(1) of the Government Code.¹

Section 552.117(2) of the Government Code requires the county to withhold all information that relates to the home address, home telephone number, social security number, and family information of a peace officer as defined by article 2.12, Code of Criminal Procedure. Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). It is not clear to this office that all of applicants whose records you submitted to this office are commissioned peace officers under article 2.12. However, to the extent that the applicants in fact are commissioned peace officers, we agree that the county must withhold all such information pursuant to section 552.117(2) of the Government Code. *But see* Open Records Decision No. 455 (1987) (protections offered by section 552.117(1) do not apply to civilian applicants for employment). We have marked additional information coming within the protection of section 552.117. Please note, however, that the applicants'

¹We assume for purposes of this ruling that all of the documents you submitted to our office are responsive to the records request.

business telephone numbers do not come under the protection of section 552.117; these telephone numbers must be released to the requestor.

In the event that any of the applicants are not peace officers, we note that those individuals' social security numbers are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), but only if the social security numbers were obtained or are maintained by the county pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the county pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the county to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the county should ensure that these numbers were not obtained or maintained by the county pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130(a)(1) of the Government Code requires the county to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by *an agency of this state.*" (Emphasis added.) Accordingly, the county must withhold the applicants' driver's license information to the extent that the information pertains to a driver's license issued by the State of Texas pursuant to section 552.130(a)(1) of the Government Code. Any other driver's license information must be released to the requestor.

We also note that you have redacted the applicants' date of birth from the records at issue. A public employee's date of birth is considered public information. *See* Attorney General Opinion MW-283 (1980). Accordingly, the county must release the applicants' dates of birth to the requestor.

We additionally note that some of the records at issue contain an applicant's personal e-mail address. The Seventy-seventh Legislature recently added section 552.137 to chapter 552 of the Government Code. This new exception makes certain e-mail addresses confidential.² Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

²House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137). Accordingly, section 552.137 of the Government Code requires the county to withhold the applicant's e-mail address that is provided for the purpose of communicating electronically with a governmental body, unless the applicant has affirmatively consented to its release.

In summary, the county must withhold pursuant to section 552.117(2) of the Government Code the home address, home telephone number, social security number, and family information of a peace officer as defined by article 2.12, Code of Criminal Procedure. However, the applicants' work telephone numbers and dates of birth must be released. The social security number of applicants who are not peace officers must be withheld pursuant to federal law only if those numbers were obtained or maintained by the county by a statute enacted on or after October 1, 1990. The personal e-mail address provided by applicants must be withheld pursuant to section 552.137 of the Government Code. The county must also withhold all information pertaining to Texas driver's licenses; however, information pertaining to a driver's license issued by any other state must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

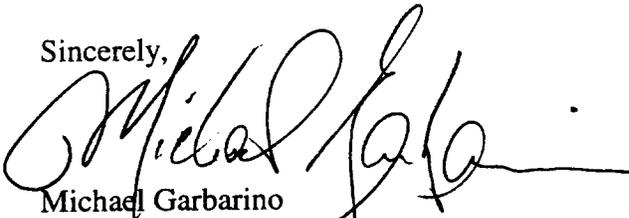
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/seg

Ref: ID# 152627

Enc. Submitted documents

c: Mr. Reynaldo Madigal
2307 Morgan Street
Corpus Christi, Texas 78405
(w/o enclosures)