



September 30, 2002

Mr. Duncan R. Fox
Deputy General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2002-5502

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169959.

The Texas Department of Public Safety (the "department") received a request for several items of information relating to two named department troopers. You advise that you have released most of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.107 and 552.115 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.107(1) protects information encompassed by the attorney-client privilege. We note that in instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See* Open Records Decision No. 574 (1990). Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *See id.* at 5.

You inform this office that the memorandum submitted as Exhibit A contains a department attorney's summary of certain facts as they apply to underlying legal issues in a particular case, the attorney's legal analysis of those facts, and legal advice to the department regarding the matter at issue. You further argue that the document is information that the department's attorneys are prohibited from disclosing under the Texas Rules of Evidence because it was prepared in the furtherance of the attorneys' rendition of professional legal services. Upon review of your arguments and the submitted information, we conclude that the information

submitted as Exhibit A is covered by the attorney-client privilege, and is therefore excepted from disclosure under section 552.107(1).

You next claim that birth certificates submitted as Exhibit B are excepted from disclosure under section 552.115 of the Government Code. Section 552.115 excepts from public disclosure birth or death records maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official. Since the birth certificates at issue are held by the department and not the bureau of vital statistics or local registration officials, section 552.115 is inapplicable.

However, the birth certificates contain some information that is confidential under section 552.117. Section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members.¹ Accordingly, we have marked the information that the department must withhold under section 552.117(2) of the Government Code. *See also* Open Records Decision No. 670 (2001) (providing that a governmental body may withhold information under section 552.117(2) without requesting a decision from this office).

In summary, you may withhold Exhibit A under section 552.107. You must withhold the information we have marked in Exhibit B under section 552.117(2). The remaining submitted information 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;

¹ "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

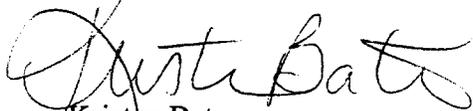
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 169959

Enc. Submitted documents

c: Mr. Linda A. Altier
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(w/o enclosures)