



October 4, 2002

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78733-0001

OR2002-5604

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170192.

The Department of Public Safety ("DPS") received a request for information relating to an accident involving a DPS employee. You state that you are releasing to the requestor a copy of the accident report regarding this incident. You claim that the remainder of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the submitted information comprises a completed report and investigation which fall within the purview of section 552.022(a)(1). Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information unless expressly made confidential under other law or except as provided by section 552.108. Gov't Code § 552.022(a)(1). Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not "other law" that makes the submitted information confidential. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential). Therefore, you may not withhold the submitted information from disclosure under section 552.103 of the Government Code.

Also, we note that peace officers are identifiable in some of the submitted photographs. Section 552.119 of the Government Code excepts from public disclosure a photograph of a

peace officer¹ that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See* Open Records Decision No. 502 (1988). The submitted copies of photographs depict peace officers, and it does not appear that any of the exceptions are applicable. You have not informed us that the peace officers have executed any written consents to disclosure. Therefore, you must withhold any depictions of peace officers per section 552.119.

Finally, we note that portions of the submitted information are excepted from required public disclosure per section 552.130 of the Government Code, which provides:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. Accordingly, we have marked the information to which section 552.130 applies. We note, however, that this section does not except out-of-state vehicle license plate numbers from public disclosure; thus, we have not marked such information.

In summary, the submitted information is not excepted per section 552.103 because it represents a completed report and investigation. We have marked the information that must be withheld pursuant to section 552.130. Pursuant to section 552.119, you must withhold any depictions of peace officers in the submitted information. The remainder of the submitted information must be released to the requestor.

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

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 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,

A handwritten signature in black ink, appearing to read "Jon Tate Self". The signature is fluid and cursive, with a large, stylized initial "J".

Jon Tate Self
Assistant Attorney General
Open Records Division

JTS/seg

Ref: ID# 170192

Enc. Marked documents

c: Mr. M. Kevin Queenan
1510 North Hampton Road, Suite 110
DeSoto, Texas 75115
(w/o enclosures)