



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 16, 2002

Ms. Donna J. Gordon  
County Attorney  
Houston County  
401 East Houston  
Crockett, Texas 75835

OR2002-7181

Dear Ms. Gordon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173751.

You state that the Houston County Sheriff's Department (the "department") received a request for all applications for employment submitted in response to the most recent job posting of Jail Administrator. You claim that the requested information is excepted from disclosure under sections 552.117 and 552.305 of the Government Code.<sup>1</sup> We have considered the exception you claim and have reviewed the submitted information. We have also considered written comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that interested person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

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<sup>1</sup> We note that section 552.305 is not itself an exception to disclosure under chapter 552, but provides for notification of a third party when a governmental body believes the property or privacy rights of the party may be implicated by the release of the requested information. *See* Gov't Code § 552.305. You indicate that you have notified third parties whose information is responsive to the request, of the request pursuant to section 552.305 of the Government Code. *See also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). The section 552.305 notice informs the third party that it may submit to the attorney general, within ten days of receiving the notice, its reasons why the information in question should be withheld. No third party submitted any arguments against disclosure of the requested information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). The application of section 552.117 provides a compelling reason to overcome the presumption.

Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code.<sup>2</sup> You state that two of the applicants whose information is at issue are peace officers. Thus, we agree that personal information of the officers must be withheld under section 552.117.

Further, if the documents also contain information pertaining to any current or former department employee or official, such an individual's personal information may also be confidential under section 552.117. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, if any information pertains to a current or former employee or official who elected under section 552.024, prior to the department's receipt of the request, to keep this information confidential, you must withhold it under section 552.117(1) of the Government Code. You may not withhold this information under section 552.117 for an employee or official who has not made a timely

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<sup>2</sup> Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure.

election under section 552.024. We have marked all information that must be withheld under section 552.117 to the extent that section 552.117(1) or 552.117(2) applies. We note that the documents include a personal post office box number. Because such addresses are not "home addresses" this information is not made confidential by section 552.117 if that exception applies, and may not be withheld on that basis. *See Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994)* ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. *See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).*" (Emphasis added)).

For any social security numbers not excepted under section 552.117, such information may be confidential under section 552.101 of the Government Code<sup>3</sup> in conjunction with federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. We have no basis for concluding that any social security number in the submitted information is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Thus, we have marked driver's license numbers and license classes that you must withhold under section 552.130.

In summary, you must withhold the information we have marked pursuant to section 552.117 to the extent that section 552.117(2) or section 552.117(1) applies. Any remaining social security numbers may be confidential under section 552.101 and the federal Social Security Act. You must withhold the driver's license number and class information that we have marked under section 552.130. The remaining requested information must be released.

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<sup>3</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information made confidential by other statutes.

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 cursive script that reads "Kristen Bates".

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 173751

Enc. Submitted documents

c: Mr. Ricky Minton  
Route 1, Box 249  
Grapeland, Texas 75844  
(w/o enclosures)