



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 30, 2002

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR2002-7447

Dear Mr. Bright

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174264

The Texas Alcoholic Beverage Commission (the "commission") received two requests for information from the same requestor. In the first, the requestor seeks thirteen categories of information related to a fatal automobile accident. The second request specifies seven categories of information also related to the same automobile accident. You state that "[t]he commission has no additional information responsive to [the requestor's] second request other than the information provided to him in response to his first request." We will accordingly address the requestor's first request for information. You state that you have released some of the requested information to the requestor. You claim, however, that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that Attachment G contains an accident report that "is not subject to disclosure by the [commission] pursuant to the permanent injunction issued by the court in *Texas Daily Newspaper Ass'n v. Cornyn*, [No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000)] and [section] 47 of article 6701d, V.T.C.S." You also argue that Attachment G in its entirety may be confidential pursuant to the same injunction. Accordingly, we address your arguments with respect to the entirety of Attachment G. A peace officer's accident report form in Attachment G appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The release of

this accident report is not governed by the Public Information Act, but rather by chapter 550 of the Transportation Code. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. The Seventy-seventh Legislature amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the entity with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the commission with two of the three pieces of information. Consequently, the commission must release the accident report in its entirety pursuant to section 550.065(b) of the Transportation Code.

You next assert that social security numbers in Attachment D are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. Section 56.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. You state that the submitted information contains the social security numbers of individuals who hold a seller/server training certificate issued under the authority of the commission. You also state that the information contains the social security numbers of trainers who are certified by the commission. Section 106.14 of the Alcoholic Beverage Code provides that the commission shall adopt rules and policies establishing the minimum requirements for approved seller training programs. Alco. Bev. Code § 106.14(b). We note that chapter 50 of title 16 of the Texas Administrative Code was adopted pursuant to the obligation in section 160.14 of the Alcoholic Beverage Code. Pursuant to section 50.8 of title 16 of the Texas Administrative Code, the commission issues an appropriate certificate to each trainee that completes an approved seller training program. 16 T.A.C. § 50.8(a). Further, the commission issues trainer certifications for the seller training program. 16 T.A.C. § 50.6. You contend that each highlighted social security number is that of an applicant for or holder of a certificate of registration, or other legal authorization issued by the commission. Based on your representations, we conclude that the social security numbers provided to the commission in Attachment D must be withheld under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code.

We note that other social security numbers in the submitted information, which we have marked, may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security number and related records that are obtained or 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 id.* We have no basis for concluding that the social security numbers in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the 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 office pursuant to any provision of law enacted on or after October 1, 1990.

You next claim that Attachment F is confidential under section 5.48 of the Alcoholic Beverage Code. This section provides as follows:

(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permit or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Public Information Act. Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the commission, with the exception of "the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license" and "a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permit or licensee." Alco. Bev. Code § 5.48. In this case, we find that the documents at issue are "private records" obtained by the commission. You also state that "there have been no administrative actions taken by the agency against [the business named in the records] wherein the records subpoenaed were introduced into evidence at hearing or before any court." Consequently,

we agree that Attachment F is made confidential by section 5.48 of the Alcoholic Beverage Code, and must be withheld from disclosure under section 552.101 of the Government Code.

You next assert that Attachment C contains information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license issued by an agency of this state. However, section 552.130 is designed to protect the privacy interests of third parties, and the common-law right to privacy expires upon death. Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, the driver's license number of the deceased individual is not excepted from disclosure under section 552.130. We have marked the information that is subject to section 552.130, including information in Attachment G, which must be withheld from disclosure.

Next, you contend that account numbers in Attachment E are excepted from disclosure under section 552.136. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;

or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The commission must withhold the highlighted account number pursuant to section 552.136. As we address your arguments under the previous exceptions to disclosure, we need not address your remaining arguments.

In summary, the commission must release the peace officer's accident report form, including all attachments thereto, pursuant to section 550.065(b) of the Transportation Code. The commission must withhold the highlighted social security numbers in Attachment D under section 552.101 in conjunction with section 56.001 of the Occupations Code. Other social security numbers in the submitted information, which we have marked, may be confidential under the federal Social Security Act if they were obtained or are maintained pursuant to any law enacted after October 1, 1990. Attachment F is confidential under section 5.48 of the

Alcoholic Beverage Code, and must therefore be withheld from disclosure under section 552.101 of the Government Code. We have marked driver's license numbers in Attachments C and G that are excepted from disclosure under section 552.130. Finally, a highlighted account number in Attachment E is excepted from disclosure under section 552.136. The remaining information must be released to the requestor.

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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 174264

Enc: Submitted documents

c: Mr. Robert C. Hill  
3500 Grand Mesa Drive  
Plano, Texas 75025  
(w/o enclosures)