



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2004

Captain Randy Traylor  
Administrative Services  
Williamson County Sheriff's Department  
508 South Rock Street  
Georgetown, Texas 78626

OR2004-2560

Dear Captain Traylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198841.

The Williamson County Sheriff's Department (the "department") received a request for five categories of information pertaining to a former department assistant deputy chief. We note that upon receipt of the request for information the department was required to either release the requested information or seek a decision from us pursuant to section 552.301 of the Government Code as to whether the department could withhold any portion of it based on exceptions to disclosure that the department believed were applicable to the information. *See Gov't Code § 552.301*. Although you timely submitted to us a copy of the written request for information, as well as information that is responsive to the request, you failed to state any exceptions to disclosure that the department believed were applicable to the requested information within ten business days of the department's receipt of the request and failed to provide us with a signed statement or evidence sufficient to establish the date that the department received the request. *See Gov't Code § 552.301(a), (b), (e)*. Therefore, since the department did not request a decision from us with regard to the requested information in compliance with section 552.301 of the Government Code, the requested information is now presumed public. *See Gov't Code § 552.302; see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). We note that a compelling interest must exist in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest exists when some other source of law makes the requested information confidential or third party interests are at stake. *See Open Records Decision No. 150 at 2 (1977)*. Based on our review of the submitted information, we find that portions of this information are made confidential by another source of law. Accordingly, we will address

the applicability of sections 552.101, 552.117, 552.1175, 552.130, 552.137, and 552.140 of the Government Code to the submitted information.

Initially, we note that a portion of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.<sup>1</sup> Section 1701.452 requires a law enforcement agency to submit a report to the Commission on Law Enforcement Officer Standards and Education regarding an officer licensed under chapter 1701 who either resigns from the law enforcement agency or whose appointment with the law enforcement agency is terminated. *See* Occ. Code § 1701.452. Section 1701.454 provides, in relevant part:

(a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.

Occ. Code § 1701.454(a). Based on our review of the submitted information, we find that the portion of the information, which we have marked, is encompassed by section 1701.454. Accordingly, we conclude that the department must withhold this particular marked information pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Next, we note that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.<sup>2</sup> Information is protected from disclosure under the common-law right to privacy when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is protected from disclosure under the common-law right of privacy. *See* Open Records Decision Nos. 600 (1992) (finding federal tax Form W-4 Employee's Withholding Allowance Certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax

---

<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

<sup>2</sup> Section 552.101 also encompasses information that is protected from disclosure under the common-law right to privacy.

compensation to group insurance, health care or dependent care related to personal financial decisions), 545 (1990) (deferred compensation plan). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992).

This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Based on our review of the remaining submitted information, we conclude that the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We also note that portions of the remaining submitted information, which we have marked, may be excepted from disclosure pursuant to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address and telephone number, social security number, and family member information of a peace officer, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code.<sup>3</sup> *See* Gov't Code § 552.117(a)(2). Based on our review of the remaining submitted information, we have marked the information under section 552.117 that the department must withhold pursuant to section 552.117(a)(2) of the Government Code, if that information pertains to an individual who is a currently licensed peace officer.

We note, however, that if that particular information is not excepted from disclosure under section 552.117(a)(2), it may nevertheless be excepted from disclosure pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of a current or former employee of a governmental body who timely requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). The determination of whether a particular item of information is excepted from disclosure under section 552.117(a)(1) must be made as of the date of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who requested confidentiality under section 552.024 for the information prior to the department's receipt of this request for information. Information may not be withheld by the department under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely request for confidentiality for such information under section 552.024. Accordingly, if any of the information that we have marked under section 552.117 is that of a current or former employee of the department who timely elected under section 552.024 to keep his

---

<sup>3</sup> Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 2.12.

section 552.117 information confidential, then the department must withhold that information pursuant to section 552.117(a)(1) of the Government Code.

Further, we note that we have marked additional information contained within the remaining submitted information that may be excepted from disclosure pursuant to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]
- (2) county jailers as defined by Section 1701.001, Occupations Code[.]
- (3) current or former employees of the Texas Department of Criminal Justice ["TDCJ"] or of the predecessor in function of the department or any division of the department[.]
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)-(b). Accordingly, we conclude that if the information that we have marked under section 552.1175 pertains to an individual listed in section 552.1175(a) who elects to restrict access to his or her such information in accordance with section 552.1175(b), then the department must withhold that information pursuant to section 552.1175 of the Government Code.

However, we also note that in the event that the social security numbers contained within the submitted information are not excepted from disclosure under section 552.117 or section 552.1175 of the Government Code, they may be excepted from disclosure pursuant to section 552.101 in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security

numbers 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* Open Records Decision No. 622 (1994). The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Therefore, we have no basis for concluding that these social security numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that they were not obtained and are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We also note that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that 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." Gov't Code § 552.130(a)(1)-(3). Based on our review of the remaining submitted information, we conclude that the department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

Furthermore, we note that an e-mail address that is contained within the remaining submitted information is excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 provides:

(a) Except as otherwise provided by this section, 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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain email addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. E-mail addresses that are encompassed by subsection 552.137(c) are also not excepted from disclosure under section 552.137. Based on our review of the remaining submitted information, we have marked the e-mail address that is excepted from disclosure under section 552.137(a). Unless the department has received affirmative consent for the release of this marked e-mail address, we conclude that it must withhold the address pursuant to section 552.137(a) of the Government Code.

Finally, we note that the remaining submitted information contains a Department of Defense Form DD-214 (the "DD-214 form") that may be excepted from disclosure pursuant to section 552.140 of the Government Code. Section 552.140 provides in relevant part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

Gov't Code § 552.140(a). Section 552.140 provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a), (b). You have not indicated the date on which this form first came into the possession of the department. If this date was on or after September 1, 2003, the department must withhold the marked form under section 552.140. If this date was before September 1, 2003, the department may not withhold any portion of the form on the basis of section 552.140 of the Government Code.

In summary, the department must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code and the common-law right to privacy. The department must also withhold the section 552.117 information that we have marked pursuant to section 552.117(a)(2) of the Government Code, if that information pertains to an individual who is a currently licensed peace officer. If section 552.117(a)(2) does not apply to that particular information, then the department must withhold that information pursuant to section 552.117(a)(1) of the Government Code, if the individual with whom the information is associated timely elected under section 552.024 of the Government Code to keep this information confidential. The department must also withhold the information that we have marked pursuant to section 552.1175 of the Government Code, if the information pertains to an individual listed in section 552.1175(a) who elects to restrict access to his or her such information in accordance with section 552.1175(b). Nevertheless, the social security numbers contained within the submitted information may be confidential under federal law. Further, the department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. Unless the department has received affirmative consent for the release of the e-mail address that we have marked, the department must withhold it pursuant to section 552.137(a) of the Government Code. In addition, the department must withhold the DD-214 form that we have marked pursuant to section 552.140 of the Government Code if it first came into the possession of the department on or after September 1, 2003. The department must release the remaining submitted information 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

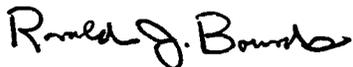
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Dep't of Pub. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 198841

Enc. Marked documents

c: Ms. Susan A. Chabert  
c/o Randy Traylor  
Williamson County  
508 South Rock Street  
Georgetown, Texas 78626  
(w/o enclosures)