



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2004

Ms. Zindia T. Thomas
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2004-8640

Dear Ms. Thomas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211067.

The Office of the Attorney General (the "OAG") received a request for information relating to job posting number 8522. You state that much of the responsive information has been released. You claim, however, that portions of some of the responsive records are excepted from disclosure under sections 552.117, 552.130, and 552.137 of the Government Code. We have considered your claimed exceptions to disclosure and have reviewed the submitted sample information.¹

Initially, you claim that portions of the responsive documents are excepted from disclosure under section 552.117. Section 552.117(a)(1) of the Government Code provides that information is excepted from disclosure if it relates to a current or former employee's home address, home telephone number, social security number, or reveals whether the employee has family members. The OAG is required to withhold this information if the employee timely requested that this information be kept confidential under section 552.024 of the

¹We assume that the sample records submitted to this office are truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Government Code. *See* Open Records Decision Nos. 622 (1994), 455 (1987); *see generally* Open Records Decision No. 530 (1989) (stating that whether particular piece of information is public must be determined at time request for it is made). You state that prior to the OAG's receipt of this written request, the employees at issue elected to withhold their personal information in accordance with section 552.024. Based on your representation, we agree that the OAG must withhold the types of information you have marked under section 552.117(a)(1).

You also claim that the marked motor vehicle information is excepted from disclosure under section 552.130. Section 552.130 of the Government Code excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1), (2). Upon review, we agree that the OAG must withhold the types of motor vehicle information you have marked under section 552.130 of the Government Code.

Finally, you seek to withhold the personal e-mail addresses of employees under 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. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You state that the employees at issue have not consented to the release of their personal e-mail addresses. Thus, the OAG must withhold personal e-mail addresses from disclosure under section 552.137.

Further, you request that this office issue a previous determination allowing the OAG to withhold information related to a driver's license or permit, motor vehicle title or registration, and personal identification card issued by an agency of this state under section 552.130 of the Government Code. Therefore, per your request, this letter ruling shall serve as a previous determination under section 552.301(a) that the following are excepted from public disclosure under section 552.130: (1) a Texas driver's license number; (2) a Texas license plate number; (3) a Texas vehicle identification number; and (4) an entire copy of a Texas driver's license. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). We note, however, that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, a person's section 552.130 information must be released to that person or that person's authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has special right of access to information that is protected by laws intended to protect person's privacy). Moreover, because section 552.130 was enacted to protect the privacy of an individual, the protection extinguishes upon the individual's death. This conclusion is consistent with prior decisions of this office, which have held that the exceptions to the Public Information Act that only protect a person's privacy interest do not survive the death of that person. *See* Attorney General Opinion H-917 (1976) (stating that common-law privacy under Gov't Code § 552.101 and 552.102 lapses on person's death); Open Records Decision Nos. 536 (1989) (stating that Gov't Code § 552.119 does not except peace officer's photograph after officer's death), 524 (1989) (stating Gov't Code § 552.114 does not except student records after student's death). Thus, the OAG may not withhold a deceased person's section 552.130 information.

This previous determination applies only to the following types of information requested of the OAG: (1) a Texas driver's license number; (2) a Texas license plate number; (3) a Texas vehicle identification number; and (4) an entire copy of a Texas driver's license. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and

circumstances do not change so as to no longer support the findings set forth above, the OAG need not ask for a decision from this office again with respect to these types of information requested of the OAG. *See id.*

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).

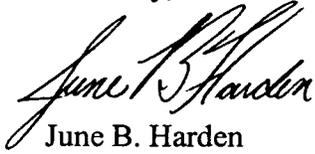
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script that reads "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 211067

Enc: Submitted documents

c: Mr. Jon H. Neugebauer
P.O. Box 10781
Austin, Texas 78766-1781
(w/o enclosures)