



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2006

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070

OR2006-00432

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 240227.

The Royse City Police Department (the "department"), which you represent, received a request for information related to a specified incident involving the electrocution of a juvenile. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information was the subject of a previous ruling issued by this office as Open Records Letter No. 2005-04506 (2005). In that ruling, we held that the privacy rule contained in the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d-1320d-8, did not except the submitted information from disclosure. We also held that the submitted information was not confidential under section 58.007 of the Family Code and could not be withheld under section 552.101 of the Government Code on that basis. Additionally, we held that Royse City failed to demonstrate the applicability of section 552.103 of the Government Code to the submitted information. We did note, however, that the submitted documents contained information protected under section 552.101 in conjunction with common law privacy and section 552.130 of the Government Code. Accordingly, we held that, with the exception of the information subject to section 552.101 in conjunction with common law privacy and section 552.130, Royse City must release the submitted information. We note that information that has been previously

released may not be withheld from any requestor unless the governmental body is able to demonstrate that the information is confidential by law. *See* Gov't Code § 552.007. In this instance, the department does not raise any new arguments for withholding the submitted information.

We do note, however, that the submitted information contains a social security number. The 79th Legislature recently enacted section 552.147 of the Government Code,¹ which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the social security number contained in the submitted information under section 552.147.² Additionally, the department must continue to follow Open Records Letter No. 2005-04506 and withhold the information we held to be protected under section 552.101 in conjunction with common law privacy and section 552.130. The remaining information must be released to the requestor immediately.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

¹Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

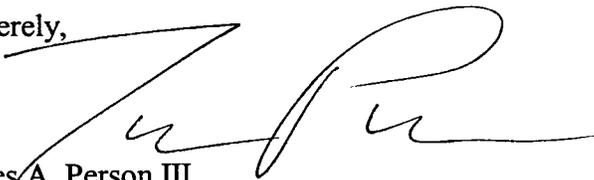
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Office of the Attorney General 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. 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 240227

Enc. Submitted documents

c: Ms. Wendy Regan
Farmers Electric
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Greenville, Texas 75403
(w/o enclosures)