



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2006

Mr. Galen Gatten
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2006-01606

Dear Mr. Gatten:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 242561.

The Midland Police Department (the "department") received a request for the following information:

- (1) Use of Force reports documenting the use of any weapon, including Tasers, stun guns, and bean bag shotguns, by any member of the department since January 1, 2000.
- (2) Reports documenting the circumstances under which members of the department came into contact with any person on whom a weapon was used since January 1, 2000.
- (3) Custodial death reports filed by or on behalf of the department documenting the death of any person in custody on whom a weapon was used since January 1, 2000.
- (4) Reports of training injuries sustained by members of the department involving weapons, including Tasers, stun guns, and bean bag shotguns.

(5) Any policies regarding the department's use of force, including force involving Tasers, stun guns, and bean bag shotguns.

You state that you have released some of the requested information. You state that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we conclude the department must withhold the information it has highlighted, as well as the additional information we have marked, under section 552.101 on the basis of common law privacy.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home 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 552.1175.¹ Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the information we have marked pertains to a peace officer, this information must be withheld under section 552.117(a)(2).

To the extent that the individuals whose information is at issue are not currently licensed peace officers, but are current or former department employees, section 552.117(a)(1) may apply. Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security numbers, and family member information of current or former official or employee of a governmental body who requests 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

¹The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees timely elected to keep their personal information confidential, the department must withhold the information we have marked under section 552.117(a)(1). The department may not withhold this information under section 552.117(a)(1) if the employees did not make timely elections to keep the information confidential.

We next address your claim under section 552.130 of the Government Code. Section 552.130 prohibits the release of 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. *See* Gov't Code § 552.130. We note, however, that section 552.130 is designed to protect individuals' privacy and that the right to privacy expires at death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). Therefore, information from motor vehicle records that were issued to a person who is now deceased may not be withheld under section 552.130. Accordingly, the department must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code.

Finally, section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov't Code § 552.147. Therefore, the department must withhold the social security numbers of living persons contained in the information under section 552.147.

In summary, the department must withhold the marked information under section 552.101 on the basis of common law privacy. To the extent the information we have marked pertains to a peace officer, this information must be withheld under section 552.117(a)(2). To the extent this information pertains to any current or former employees of the department who timely elected confidentiality for the information under section 552.024, it must be withheld under section 552.117(a)(1). The department must withhold the information marked under section 552.130. The department must also withhold the social security numbers of living persons contained in the submitted information under section 552.147. The remaining submitted 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, 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 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 242561

Enc. Submitted documents

c: Ms. Gabriell J. Wicklund
c/o Light of Day Project
Freedom of Information Foundation of Texas
400 South Record Street, Suite 240
Dallas, Texas 75202
(w/o enclosures)