



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 11, 2006

Ms. Paige H. Saenz  
Barney Knight & Associates  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2006-07358

Dear Ms. Saenz:

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# 253487.

The City of Gun Barrel (the "city"), which you represent, received a request for copies of personnel files for four named individuals. You state that a portion of the requested documents will be provided to the requestor, with some information redacted pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001).<sup>1</sup> You claim, however, that the remaining requested information is excepted from disclosure under sections 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your claim that some of the information in Exhibit A must be withheld under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a peace officer regardless of whether the officer

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<sup>1</sup> See Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to chapter 552 of Government Code to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without necessity of requesting attorney general decision under section 552.117(a)(2)); see also Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

requests confidentiality for that information under section 552.024 or 552.1175 of the Government Code.<sup>2</sup> We note that section 552.117 does not encompass an officer's date of birth. You state that the information at issue pertains to "a licensed peace officer whose commission is carried by the [c]ity." Based on this assertion, we agree that section 552.117(a)(2) is applicable in this instance, and the city must withhold the information we have marked on that basis.

Next, you argue that portions of Exhibit A are confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (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 of a local agency authorized to issue an identification document.

Gov't Code § 552.130. We have marked the information that the city must withhold under section 552.130.

Next, we note that the submitted documents contain information that is subject to section 552.101 of the Government Code.<sup>3</sup> 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 doctrine of common law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). Upon review, we

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<sup>2</sup> "Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

have marked the information that the city must withhold under section 552.101 on the basis of common law privacy.

Finally, we note that the submitted information contains an email address. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address we have marked does not appear to be of a type specifically excluded by section 552.137(c). Therefore, the city must withhold the e-mail address we have marked in accordance with section 552.137 unless the city receives consent for its release.

In summary, the city must withhold the marked peace officer information under section 552.117(a)(2) and the marked Texas motor vehicle record information under section 552.130 of the Government Code. The city must also withhold the information we have marked under section 552.101 in conjunction with common law privacy, and the email address we have marked under section 552.137 unless the city receives consent for its release. The remaining submitted information must be released.

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,



Shelli Egger  
Assistant Attorney General  
Open Records Division

SE/sdk

Ref: ID# 253487

Enc. Submitted documents

c: Mr. Jerry L. Moore  
6190 CR 4518  
LaRue, Texas 75770  
(w/o enclosures)