



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 23, 2006

Mr. Scott Kelly  
Deputy General Counsel  
The Texas A& M University System  
Office of the General Counsel  
A&M System Building, Ste. 2079  
200 Technology Way  
College Station, Texas 77845-3424

OR2006-09739

Dear Mr. Kelly:

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# 257483.

The Tarleton State University (the "university") received a request for several categories of information regarding a named university police officer and the university police department. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the university has only submitted information for our review related to an internal affairs investigation concerning the university officer's handling of a felony stop and two offense reports where officers' guns were drawn. Thus, we assume that the university has released any other responsive information to the extent it existed on the date the university received the request. If not, the university must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), 302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible under circumstances).

We now turn to you arguments regarding 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 information protected by section 58.007 of the Family Code. Law enforcement records involving juvenile offenders and relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). In this instance, you seek to withhold Exhibit B-1, which consists of an internal affairs investigation concerning the university officer’s handling of a felony stop of a vehicle involving juvenile suspects. Upon review, we find that the internal affairs investigation contains a juvenile law enforcement record that pertains to conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply. Thus, we determine that the juvenile law enforcement record that we have marked in Exhibit B-1 is confidential pursuant to section 58.007(c) of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>1</sup> The remainder of Exhibit B-1, however, does not consist of juvenile law enforcement records and may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

We note that some of the remaining information in Exhibit B-1 is protected by common-law privacy, which is also encompassed by section 552.101 of the Government Code. The common-law right of privacy 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 common-law privacy generally protects the

---

<sup>1</sup>Because our ruling is dispositive as to this information, we need not address your remaining arguments.

identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. We have reviewed the remaining information in Exhibit B-1 and marked the identifying information of the juvenile offenders that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim that a portion of the remaining information in Exhibit B-1, which you have marked, is excepted from public disclosure under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon review, we agree that the university must withhold the information you have marked in Exhibit B-1 under section 552.117(a)(2) of the Government Code.

You claim that portions of Exhibit B-2, which you have marked, are excepted from disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure 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[.]

Gov't Code § 552.130(a)(1), (2). Upon review, we agree that you must withhold the Texas-issued motor vehicle record information you have marked in Exhibit B-2, as well as the information we have marked, under section 552.130 of the Government Code.

You claim that an e-mail address in Exhibit B-1, which you have marked, is excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 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* Gov't Code § 552.137(a)-(c). The marked e-mail address is not the type specifically excluded by section 552.137(c). Therefore, unless the individual whose e-mail address is at issue consented to release of the e-mail address, the university must withhold it in accordance with section 552.137 of the Government Code.

You claim that the social security numbers in Exhibit B-2 are excepted from public disclosure under section 552.147 of the Government Code. Section 552.147 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 university must withhold the social security numbers in Exhibit B-2 under section 552.147 of the Government Code.<sup>2</sup>

In summary, the university must withhold the juvenile law enforcement record we have marked in Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The university must withhold the identifying information of the juvenile offenders in Exhibit B-1 under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the information you have marked in Exhibit B-1 under section 552.117(a)(2) of the Government Code. The university must withhold the information you have marked in Exhibit B-2, as well as the information we have marked, under section 552.130 of the Government Code. Unless the individual whose e-mail address is at issue consented to release of the e-mail address, the university must withhold it in accordance with section 552.137 of the Government Code. Finally, the university must withhold the social security numbers in Exhibit B-2 under section 552.147 of the Government Code. As the university does not raise any other exceptions against disclosure, the remaining 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

---

<sup>2</sup>We 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.

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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/ir

Ref: ID# 257483

Enc. Submitted documents

c: Mr. Allan Butcher, Jr.  
130 North Graham  
PO Box 1642  
Stephenville, TX 76401  
(w/o enclosures)