



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2007

Mr. Arturo D. Rodriguez, Jr.
Russell & Rodriguez, L.L.P.
Texas Heritage Plaza
102 West Morrow Street, Suite 103
Georgetown, Texas 78626

OR2007-13904

Dear Mr. Rodriguez:

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# 292777.

The City of Honey Grove (the "city"), which you represent, received a request for seventeen categories of information relating to a named officer, his training, the city police department, and the city. You state that you will make available for inspection eight of the requested categories of information. You state that the city does not maintain information for seven of the categories. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.117¹, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which you inform us is a representative sample.²

¹Although the city additionally asserts section 552.1175, we do not address this exception because the proper exception to raise in this case is section 552.117. Section 552.117 is applicable because the city holds the information at issue in its capacity as employer or former employer of the named officer.

²We assume that the "representative sample" of records submitted to this office is 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.

This office has issued a previous determination allowing all governmental bodies to redact certain personal information of peace officers under section 552.117(a)(2) of the Government Code. See Open Records Decision No. 670 (2001) (previous determination that governmental body may withhold home address, home telephone number, personal cellular phone number, personal pager number, social security number and information that reveals whether individual has family members, of any individual who meets definition of “peace officer” set forth in article 2.12 of Texas Code of Criminal Procedure without necessity of requesting attorney general decision as to whether exception under section 552.117(a)(2) applies). Accordingly, the city may withhold information subject to section 552.117(a)(2) without seeking a decision from this office. The city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. The submitted information contains an F-5 form (Report of Separation of License Holder), which is made confidential by section 1701.454 of the Occupations Code. Section 552.101 encompasses section 1701.454. Section 1701.454 provides in relevant part that “[a] report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552 of the Government Code.” Occ. Code. § 1701.454(a). The city must withhold the F-5 form we have marked pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

You claim that some of the submitted information is private under sections 552.101 and 552.102. Section 552.102 of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.–Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. Accordingly, we address the city’s section 552.102 claim for this information in conjunction with its common law privacy claim under section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure 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.*, 540 S.W.2d at 685. The type 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. Upon review, we determine that no part of the remaining information is highly intimate or embarrassing. Accordingly, no part of the remaining information may be withheld on this basis.

Section 552.130 of the Government Code excepts from disclosure 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.”³ Gov’t Code § 552.130. In accordance with section 552.130, the city must withhold the Texas driver’s license and license plate numbers and we have marked.

In summary, the city must withhold the information we have marked pursuant to section 552.117(a)(2) of the Government Code. The city must withhold the F-5 form we have marked pursuant to section 552.101 in conjunction with section 1701.454 of the Occupations Code. The city must withhold the information we have marked pursuant to section 552.130. The remaining information must be released.⁴

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

³The Office of the Attorney General will raise a mandatory exceptions like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴The remaining information contains social security numbers. 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.

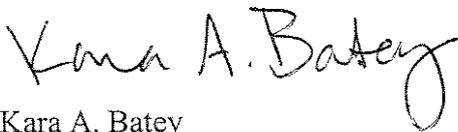
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 292777

Enc. Submitted documents

c: Mr. Michael S. Evans
308 North Center
Bonham, Texas 75418
(w/o enclosures)