



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 10, 2008

Mr. Brad Young
Bickerstaff Heath Delgado Acosta L.L.P.
816 Congress Avenue, Suite 1700
Austin, Texas 78701

OR2008-15438

Dear Mr. Young:

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# 327457.

The Marble Falls Police Department (the "department"), which you represent, received a request for information pertaining to a specified department officer. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Section 552.101 encompasses information made confidential by other statutes. You state that the submitted information contains accident report forms that were completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces

of information specified by the statute. *Id.* The requestor has not provided the department with two of the three pieces of information for any of the reports; thus, the department must withhold the submitted accident reports, which we have marked, under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Next, you claim that portions of the remaining information contain criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Section 411.083 of the Government Code, which is encompassed by section 552.101 of the Government Code, deems confidential CHRI that the DPS maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we agree that a portion of the submitted information, which we have marked, consists of CHRI, and must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. However, none of the information you have marked consists of CHRI, and it may not be withheld on this basis.

Section 552.101 also encompasses 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 personal financial information not relating to the financial transaction between an individual and a governmental body is generally intimate and embarrassing. *See* Open Records Decision No. 545 (1990). The marked information constitutes financial information records. Further, in this instance we find that there is not a legitimate public interest in the release of this information. Accordingly, you must withhold the marked financial information under section 552.101 in conjunction with common-law privacy.

Next, section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 or 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). We note, however, that a post office box number does not

constitute a "home address" for purposes of section 552.117, and must be released.¹ We also note that section 552.117(a)(2) encompasses a peace officers' cellular telephone and pager numbers if the officer personally pays for the cell or pager service. *See* Open Records Decision No. 670 at 6 (2001); *see also* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). Section 552.117(a)(2) adopts the definition of peace officer found at article 2.12 of the Code of Criminal Procedure. You state that the officer whose information is the subject of this request is a peace officer under article 2.12 of the Code of Criminal Procedure. Accordingly, the department must withhold the information we have marked under section 552.117 of the Government Code. However, section 552.117 is not applicable to any of the remaining information you have marked, and this information may not be withheld under section 552.117.

Next, we note that section 552.1175 of the Government Code may apply to a portion of the remaining information.² Section 552.1175 provides in part the following:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). We note that section 552.1175 also encompasses a personal cellular telephone number, provided that the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6 (1988). The remaining information includes three telephone numbers that belong to police officers not employed by the department. You do not inform this office, nor does any of the submitted information indicate, whether the officers at issue elected yet to keep this information confidential in accordance with subsections 552.1175(b)(1) and (2). Accordingly, if these numbers constitute the officers'

¹*See generally*, Open Records Decision No. 622 at 4 (1994) (purpose of confidentiality provision excepting public employee's personal information from required disclosure is to protect them from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

²The 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).

home telephone numbers or are cellular telephone numbers with service that is not paid for by a governmental body and if the officers elect to restrict access to this information in accordance with section 552.1175(b), then the department must withhold the telephone numbers that we have marked under section 552.1175. If no elections are made, or if the telephone numbers do not pertain to home or cellular telephone service paid for by the officers, then the department must release these telephone numbers.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides which provides in part:

(a) Information is excepted from the requirements 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;
- (2) a motor vehicle title or registration issued by an agency of this state;
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130(a). The department must withhold a portion of the Texas motor vehicle record information that it has marked, along with the additional information that we have marked, under section 552.130 of the Government Code. However, the remaining information you have marked under section 552.130 does not constitute Texas motor vehicle record information, and this information, which we have marked for release, may not be withheld under section 552.130.

The remaining information also contains an e-mail address that is excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137 (b). You do not inform us that the owner of the e-mail address has affirmatively consented to release of his e-mail address. Therefore, unless the department receives consent to release the marked e-mail address, the department must withhold it under section 552.137.

Finally, section 552.147 of the Government Code states that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147.

Upon review, we agree that the department may withhold the remaining marked social security numbers under section 552.147 of the Government Code.³

In summary, the department must withhold the following information under section 552.101: (1) the submitted accident reports in conjunction with section 550.065(b) of the Transportation Code, (2) the CHRI we have marked in conjunction with chapter 411 of the Government Code and federal law, and (3) the marked financial information in conjunction with common-law privacy. The department must withhold the information we have marked under section 552.117 of the Government Code. If telephone numbers we have marked under section 552.1175 constitute the officers' home telephone numbers or are cellular telephone numbers with service that is not paid for by a governmental body and if the officers elect to restrict access to this information in accordance with section 552.1175(b), then the department must withhold the telephone numbers that we have marked under section 552.1175. With the exception of the information we have marked for release, the department must withhold the information marked under section 552.130. Unless the department receives consent to release it, the department must withhold the marked e-mail address under section 552.137. The department may withhold the marked social security numbers under section 552.147 of the Government Code. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

³Section 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. Gov't Code § 552.147(b).

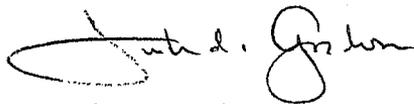
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor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



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jb

Ref: ID# 327457

Enc. Submitted documents

c: Ms. Ashley Nichols
Law Office of Jamie Balagia
P.O. Box 360
Manor, Texas 78653
(w/o enclosures)