



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2009

Mr. David M. Swope  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2009-10799

Dear Mr. Swope:

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# 351192 (C.A. File No. 09GEN0805).

The Harris County Constable Precinct 5 (the "constable") received a request for the complete personnel file of a named deputy. You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a peace officer's accident report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three items of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See 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

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<sup>1</sup>Although you raise section 552.1175 of the Government Code, we note that section 552.117 is the proper exception to claim for information relating to a former employee of the constable.

report to a person who provides the agency with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the constable with two of the three specified items of information regarding this accident. Therefore, the constable must withhold the accident report form we have marked pursuant to section 550.065(b) of the Transportation Code.<sup>2</sup>

We next note that the remaining information contains an F-5 form ("Report of Separation of Licensee"). 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 section 1701.454 of the Occupations Code, which governs the public availability of an F-5 form submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. In this instance, it does not appear that the named officer resigned due to substantiated incidents of excessive force or violations of the law other than traffic offenses. We, therefore, conclude that the constable must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.<sup>3</sup>

You assert that some of the remaining information is excepted under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. *See* Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision Nos. 670 at 6 (2001), 506 at 5-7 (1988)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure for this information.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of portions of this information.

(statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance, some of the submitted information concerns an officer who is no longer employed by the constable, and it is unclear whether the remaining individuals whose personal information we have marked are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individuals at issue are licensed peace officers as defined by article 2.12, the constable must withhold the personal information we have marked under section 552.117(a)(2) of the Government Code; however, the constable may only withhold the marked cellular telephone numbers if the employees at issue paid for the cellular telephones with their own funds.

If the individuals at issue are not licensed peace officers, then their personal information may be excepted under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). The constable may only withhold information under section 552.117(a)(1) if the individuals at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the individuals timely elected to keep their personal information confidential, the constable must withhold the information we have marked under section 552.117(a)(1).

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. *Id.* § 552.147(a). Regardless of the applicability of section 552.117, 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. Therefore, the constable may withhold the social security numbers you have marked under section 552.147.

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.” Gov’t Code § 552.130(a)(1), (2). The constable must withhold the driver’s license and motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the constable must withhold the accident report form we have marked pursuant to section 550.065(b) of the Transportation Code. The constable must withhold the submitted F-5 form under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. The constable must withhold the personal

information of currently licensed peace officers under section 552.117(a)(2) of the Government Code. If the individuals at issue are not currently licensed peace officers but have timely elected confidentiality, then the constable must withhold the marked personal information under section 552.117(a)(1) of the Government Code. Regardless of whether section 552.117 applies, the constable may withhold the marked social security numbers pursuant to section 552.147 of the Government Code. The constable must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/rl

Ref: ID# 351192

Enc. Submitted documents

c: Requestor  
(w/o enclosures)